

**UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION**

In Re: Highland Capital Management, L.P. § Case No. **19-34054-SGJ-11**

Hunter Mountain Investment Trust

Appellant §

vs. §

Highland Capital Management, L.P, et al § **3:23-CV-2071-E**

Appellee §

**[3904] Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders"
Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary
Proceeding. Entered on 8/25/2023.**

Volume 41

APPELLANT RECORD

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.

Reorganized Debtor.

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Chapter 11

Case No. 19-34054-sgj11

INDEX

APPELLANT HUNTER MOUNTAIN INVESTMENT TRUST'S
SECOND SUPPLEMENTAL STATEMENT OF THE ISSUES AND
DESIGNATION OF ITEMS FOR INCLUSION IN THE APPELLATE RECORD

COMES NOW Appellant/Movant Hunter Mountain Investment Trust, both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P., and the Highland Claimant Trust,¹ (collectively, "Appellant" or "HMIT"), and files this Second Supplemental² Statement of the Issues and Designation of Items for Inclusion in the Appellate Record pursuant to Federal Rule of Bankruptcy Procedure 8009(a)(1):

I.
STATEMENT OF THE ISSUES

- A. Did the bankruptcy court err in determining that the "colorable" claim analysis allowed the court to consider evidence and other non-pleading materials including, but not limited to, the court's reasoning that:
1. the colorability analysis is stricter than a non-evidentiary, Rule 12(b)(6)-type analysis;
 2. the colorability analysis is "akin to the standards applied under the ... *Barton* doctrine";
 3. the colorability analysis requires a "hybrid" of the *Barton* doctrine and "what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place"; and/or,

¹ And in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), the supplement to the Emergency Motion [Dkt. No. 3760], and the draft Complaint attached to the same [Dkt. No. 3760-1].

² Appellant files this Second Supplement pursuant to the Clerk's request at Docket #3949 and correspondence on 10/23/2023.

4. “[t]here may be mixed questions of fact and law implicated by the Motion for Leave”?

[See Dkt. Nos. 3781, 3790, 3903-04].

- B. Did the bankruptcy court err in determining that Appellant lacked constitutional or prudential standing to bring its claims in its individual and derivative capacities?

[See Dkt. Nos. 3903-04].

- C. Did the bankruptcy court err in alternatively determining that, even under a non-evidentiary, Rule 12(b)(6)-type analysis, Appellant did not assert colorable claims including, but not limited to, determining that:

1. Appellant’s allegations are conclusory, speculative, or constitute “legal conclusions”;
2. Appellant’s claims or allegations are not “plausible”;
3. Appellant’s allegations pertaining to a *quid pro quo* are “pure speculation”;
4. Proposed Defendant James P. Seery (“Seery”) owed no duty to Appellant in any capacity as a matter of law;
5. Appellant failed “to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty”;
6. Appellant’s allegations pertaining to its aiding and abetting and conspiracy claims are speculative and not plausible;
7. The remedies of equitable disallowance and equitable subordination are not remedies “available” to Appellant as a matter of law;
8. Appellant’s unjust enrichment claim is invalid as a matter of law because “Seery’s compensation is governed by express agreements”;
9. Appellant is not entitled to declaratory relief because it has no colorable claims; and/or
10. Appellant cannot recover punitive damages for its breach of fiduciary duty claim?

[See Dkt. Nos. 3903-04].

- D. Alternatively, even if the bankruptcy court correctly determined that its “hybrid” *Barton* analysis controls, did the court violate Appellant’s due process rights by denying Appellant its requested discovery?

[See Dkt. Nos. 3800, 3853, 3903-04, June 8, 2023 Hearing].

- E. Alternatively, did the bankruptcy court err by denying Appellant’s requested discovery including, but not limited to:

1. ordering that Appellant could not request or obtain any discovery other than a deposition of Seery and James D. Dondero; and/or
2. determining that state court “Rule 202” proceedings supported the denial of discovery?

[See Dkt. Nos. 3800 & June 8, 2023 Hearing; *see also* Dkt. Nos. 3903-04].

- F. Alternatively, did the bankruptcy court err by denying Appellant’s alternative request for a continuance to obtain the requested discovery?

- G. Alternatively, did the bankruptcy court err by excluding Appellant’s evidence, or admitting the same for only limited purposes, offered at the June 8, 2023 Hearing?

- H. Alternatively, did the bankruptcy court err by overruling Appellant’s objections to Appellees’ evidence offered at the June 8, 2023 Hearing?

- I. Alternatively, did the bankruptcy court err by excluding Appellant’s experts’ testimony?

[See Dkt. No. 3853; *see also* Dkt. Nos. 3903-04].

- J. Alternatively, did the bankruptcy court err by striking Appellant’s proffer of its excluded experts’ testimony from the record?

[See Dkt. No. 3869].

- K. Alternatively, if the bankruptcy court correctly determined that its “hybrid” *Barton* analysis controls, did the bankruptcy court err in determining that Appellant had not asserted colorable claims under that “hybrid” analysis including, but not limited to, its findings that:

1. there is no evidence to support that Seery shared material non-public information with the Claims Purchasers;
2. there is no evidence to support the alleged quid pro quo;
3. the material shared was *public* information; and/or
4. the Claims Purchasers had sufficient and lawful reasons to pay the amounts paid

for the purchased claims.

[See Dkt. Nos. 3903-04].

- L. Did the bankruptcy court err in finding that Appellant is controlled by Dondero, and, as such, Appellant “cannot show that it is pursuing the Proposed Claims for a proper purpose”?
- M. Alternatively, does sufficient evidence support the bankruptcy court’s evidentiary findings made pursuant to its “hybrid” *Barton* analysis?
- N. Did the bankruptcy court err in denying an expedited hearing on Appellant’s Motion for Leave? [See Dkt. 3713].
- O. Does the bankruptcy court’s use of a new “colorability” standard to determine if claims by non-debtors against other non-debtors may proceed violate *Stern v. Marshall* and its progeny?
- P. Did the bankruptcy court err in denying Appellant’s Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 including, but not limited to by:
 - 1. declining to consider disclosures that demonstrated that Appellant is “in the money”—an issue pertinent to the court’s erroneous standing decisions; and
 - 2. concluding that the disclosures failed to reinforce Appellant’s standing to pursue the claims presented?

[Dkt. 3936].

II.
DESIGNATION OF ITEMS FOR INCLUSION
IN THE APPELLATE RECORD

Vol. 1
1. Notice of Appeal

- a.** Notice of Appeal [Dkt. 3906];
- b.** Amended Notice of Appeal [Dkt. 3908]; and
- c.** Second Amended Notice of Appeal [Dkt. 3945]

2. The judgment, order, or decree appealed from:

- a.** Memorandum Opinion and Order Pursuant to Plan “Gatekeeper Provision” and Pre-Confirmation “Gatekeeper Orders”: Denying Hunter Mountain Investment

000835
000940

Trust's Emergency Motion for Leave to File Adversary Proceedings [Dkts. 3903 & 3904]; and

001045

- b. Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 [Dkt. 3936].

3. Docket sheet.

001049

- a. Bankruptcy Case No. 19-34054

4. Other Items to be included:

- a. HMIT hereby designates the following items in the record on appeal from Cause No. 19-34054-sgj11:

| Vol. 2 | FILE DATE | DOCKET NO. (INCLUDING ALL ATTACHMENTS AND APPENDICES) | DESCRIPTION |
|--------|------------|--|---|
| 001594 | 01/22/2021 | 1808 | Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) |
| 001660 | 02/22/2021 | 1943 | Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief |
| 001821 | 09/09/2022 | 3503 | Motion to Conform Plan filed by Highland Capital Management, L.P. |
| 001830 | 02/27/203 | 3671 | Memorandum Opinion and Order on Reorganized Debtor's Motion to Conform Plan |
| Vol. 3 | 03/28/2023 | 3699 (3699-1 — 3699-5) | HMIT Emergency Motion for Leave to File Verified Adversary Proceeding and Attached Verified Adversary Complaint |
| 001849 | 03/28/2023 | 3700 (3700-1) | HMIT Motion for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding |
| Vol. 4 | 03/30/2023 | 3704 | Farallon, Stonehill, Jessup and Muck Objection to Motion for Expedited Hearing |
| 002236 | 03/30/2023 | 3705 | HMIT Amended Certificate of Conference |
| 002243 | | | |
| 002248 | | | |

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|------------------|------------|--|---|
| Vol. 5 002251 | 03/30/2023 | 3706 | HMIT Amended Certificate of Conference |
| 002254 | 03/30/2023 | 3707 | Highland's Response in Opposition to Emergency Motion for Leave |
| 002262 | 03/30/2023 | 3708 (3708-1 — 3708-8) | Declaration of John Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding |
| 002348 | 03/31/2023 | 3712 | HMIT Reply in Support of Application for Expedited Hearing |
| 002355 | 03/31/2023 | 3713 | Order Denying Motion for Expedited Hearing |
| 002358 | 04/04/2023 | 3718 (3718-1 — 3718-4) | HMIT Motion for Leave to File Appeal |
| 002391 | 04/04/2023 | 3719 (3719-1) | HMIT Motion for Expedited Hearing on Motion for Leave to File Appeal |
| 002398 | 04/05/2023 | 3720 | Order Denying HMIT's Opposed Motion for Expedited Hearing |
| 002400 | 04/05/2023 | 3721 (3721-1 — 3721-2) Thru Vol. 7 | HMIT Notice of Appeal |
| Vol. 8 002826 | 04/06/2023 | 3726 (3726-1) Thru Vol. 9 | Certificate of Mailing regarding HMIT Notice of Appeal |
| Vol. 9 003257 | 04/07/2023 | 3731 | Notice of Docketing Transmittal of Notice of Appeal |
| 003260 | 04/13/2023 | 3738 (3738-1) | Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to HMIT's Emergency Motion for Leave |
| 003270 | 04/13/2023 | 3739 | Highland's Motion for Expedited Hearing |
| 003278 | 04/13/2023 | 3740 | Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date With Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding filed by Farallon |

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|----|------------|---|--|
| | | Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC | |
| 1 | 04/13/2023 | 3741 | Notice of Hearing for 04/24/2023 at 1:30 PM |
| 6 | 04/13/2023 | 3742 | Amended Notice of Hearing for 04/24/2023 at 1:30 PM |
| 11 | 04/13/2023 | 3745 | Notice of Appearance and Request for Notice by Omar Jesus Alaniz filed by James P. Seery Jr. |
| 94 | 04/15/2023 | 3747 | Joinder by James P. Seery Jr. to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding |
| 6 | 04/17/2023 | 3748 | HMIT's Response and Reservation of Rights |
| 9 | 04/19/2023 | 3751 | Notice of Status Conference |
| 02 | 04/21/2023 | 3758 | HMIT's Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability" |
| 1 | 04/21/2023 | 3759 | HMIT's Notice of Rescheduling Hearing |
| 14 | 04/21/2023 | 3761 | HMIT's Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability" ³ |
| 23 | 04/23/2023 | 3760 (3760-1) | HMIT's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding and Attached Verified Adversary Complaint |
| 8 | 04/25/2023 | 3765 | Transcript of Hearing held on 04/24/2023 |
| 30 | 05/11/2023 | 3780 | Objection to Hunter Mountain Investment Trust's (i) Emergency Motion for Leave to File Verified Adversary Proceeding; and (ii) Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck |

³ A duplicate of Doc 3758.

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| Vol. 10 | | | Holdings LLC, Stonehill Capital Management LLC |
| 003458 | 05/11/2023 | 3781 | Order Fixing Briefing Scheduling and Hearing Date with Respect to HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented |
| 003463 | 05/11/2023 | 3783 | Highland and Seery's Joint Response to HMIT's Emergency Motion for Leave |
| Vol. 11 | 05/11/2023 | 3784 (3784-1 — 3784-46) | Declaration of John Morris in Support of Highland Parties' Joint Response |
| 003537 Thru Vol. 16 | 05/18/2023 | 3785 | HMIT's Reply in Support of Emergency Motion for Leave to File Adversary Proceeding |
| Vol. 17 | 05/22/2023 | 3787 | Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE##3699 & 3760] |
| 004665 | 05/24/2023 | 3788 (3788-1 — 3788-5) | HMIT's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing |
| 004712 | 05/24/2023 | 3789 | HMIT's Application for Expedited Hearing |
| 004714 | 05/24/2023 | 3790 | Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE##3699 & 3760] |
| 004808 | 05/25/2023 | 3791 (3791-1 — 3791-5) | HMIT's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing |
| 004813 | 05/25/2023 | 3792 | Order Setting Expedited Hearing |
| 004836 | 05/25/2023 | 3795 | Objection to Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC |
| Vol. 18 | | | |
| 004930 | | | |
| 004931 | | | |

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|------------|---------------------------|---|
| 05/25/2023 | 3798 (3798-1) | Highland Parties' Joint Response in Opposition to HMIT's Emergency Motion for Expedited Discovery |
| 05/26/2023 | 3800 | Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing |
| 05/28/2023 | 3801 | Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing |
| 06/05/2023 | 3815 (3815-1) | Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding |
| 06/05/2023 | 3816 (3816-1) | Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding |
| 06/05/2023 | 3817 (3817-1 — 3817-5) | Highland Parties' Witness and Exhibit List with Respect to Evidentiary Hearing on June 8, 2023 |
| 06/05/2023 | 3818 (3818-1 — 3818-9) | HMIT's Witness and Exhibit List in Connection with its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement |
| 06/07/2023 | 3820 | Highland Parties' Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully |
| 06/07/2023 | 3821 (3821-1 — 3821-3) | Declaration in Support of Highland Parties' Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully |
| 06/07/2023 | 3822 (3822-1) | HMIT's Unopposed Motion to File Exhibit Under Seal [WITHDRAWN] |
| 06/07/2023 | 3823 | Joinder to Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC |

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| 06/07/2023 | 3824 | HMIT's Objections to the Highland Parties' Exhibit and Witness List |
| 06/08/2023 | 3828 | HMIT's Response to Highland Claimant Trust and James P. Seery, Jr.'s Joint Motion to Exclude Testimony and Documents of Experts Scott Van Meter and Steve Pully |
| 06/09/2023 | 3837 | Request for transcript regarding hearing held on 06/08/2023 |
| 06/12/2023 | 3838 | Court admitted exhibits on hearing June 8, 2023 (See Docket Entry Nos. 3817 & 3818) |
| 06/12/2023 | 3841 | Highland Parties' Reply in Further Support of their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully |
| 06/12/2023 | 3842 (3842-1) | Claim Purchasers' Joinder to Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery Jr.'s Reply in Further Support of Their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC |
| 06/13/2023 | 3843 | Transcript regarding Hearing Held 06/08/2023 |
| 06/13/2023 | 3844 | Transcript regarding Hearing Held 05/26/2023 |
| 06/13/2023 | 3845 | HMIT's Request for Oral Hearing or, Alternatively, a Schedule for Evidentiary Proffer |
| 06/13/2023 | 3846 | Response in Opposition to Hunter Mountain Investment Trust's Request for Oral Argument or, Alternatively, a Schedule for Evidentiary Proffer filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr. |
| 06/13/2023 | 3847 | HMIT's Reply to the Highland Parties' Response to Request for Oral Hearing |
| 06/16/2023 | 3853 | Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence |

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|-------------------|------------|---------------------------|---|
| Vol. 42 009928 | 06/16/2023 | 3854 | Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence |
| 009944 | 06/19/2023 | 3858 (3858-1 — 3858-2) | Hunter Mountain Investment Trust's Evidentiary Proffer Pursuant to Rule 103(a)(2) ⁴ |
| 010013 | 06/23/2023 | 3860 | The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer |
| 010023 | 06/23/2023 | 3861 | Claim Purchasers' Joinder to the Highland Parties' Objections and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer |
| 010025 | 07/05/2023 | 3869 | Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) and Limiting Briefing |
| 010029 | 07/06/2023 | 3872 | Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust filed by Debtor Highland Capital Management, L.P. and the Highland Claimant Trust |
| 010035 | 07/21/2023 | 3888 | Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 filed by Highland Capital Management, L.P. |
| 010047 | 07/21/2023 | 3889 | Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 filed by the Highland Claimant Trust |
| 010059 | 08/17/2023 | 3901 | Withdrawal of HMIT's Unopposed Motion to File Exhibit Under Seal filed by Creditor Hunter Mountain Investment Trust |
| Vol. 43 010062 | 09/08/2023 | 3905 (3905-1 — 3905-6) | Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief Filed by Creditor Hunter Mountain Investment Trust |

⁴ HMIT understands that the Court struck this proffer in docket entry 3869. Because the proffer appears to remain on the record and to avoid any argument that HMIT has failed its burden to designate the record, HMIT designates this docket entry out of an abundance of caution.

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| 09/11/2023 | 3907 | Clerk's Correspondence regarding HMIT's Notice of Appeal |
| 09/22/2023 | 3928 | Notice Regarding Appeal and Pending Post-Judgment Motion filed by HMIT |

B. Exhibits.

Further, the Parties submitted hearing exhibits. HMIT designates for inclusion in the record for appeal all the hearing exhibits submitted to the Court, which were all electronically filed and are in the Court's record and are a part of this Appellate Record. (Docs. 3817 and 3818). The following exhibits are submitted and included in the Court's record:

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| <u>HMIT Exhibits</u> (Dkts. 3818, 3818-1, 3818-2, 3818-3, 3818-4, 3818-5, 3818-6, 3818-7, 3818-8, and 3818-9) |
| HMIT Exhibits 1-4, 6-80 |
| <u>HCM Exhibits</u> (Dkts. 3817, 3817-1, 3817-2, 3817-3, 3817-4, 3817-5) |
| HCM Exhibits 2-15, 25-34, 36, 38-42, 45-46, 51, 59-60, 100 |

Dated: October 23, 2023

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY
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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served via ECF notification on October 23, 2023, on all parties receiving electronic notification.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

1 A I don't know.

2 Q If you don't remember, that's fine.

3 A I don't remember, yeah.

4 MR. MCENTIRE: Your Honor, would he please give the
5 witness an opportunity to answer? He's interrupted three
6 times in less than five seconds. Give the witness an
7 opportunity to respond.

8 MR. MORRIS: This is real easy stuff.

9 THE COURT: Okay.

10 MR. MORRIS: I'm trying to cross him here.

11 MR. MCENTIRE: Your Honor, with all due respect, he's
12 making it very difficult because he's being very aggressive --

13 MR. MORRIS: Nah.

14 MR. MCENTIRE: -- and he's interrupting the witness.

15 MR. MORRIS: I would never.

16 THE COURT: Okay. I don't feel the need to do that
17 right now, but I will -- I will consider your request.

18 THE WITNESS: Can I give a complete answer to his
19 last question, or one that I'd like to be my answer on the
20 record?

21 THE COURT: Go ahead.

22 THE WITNESS: The governing responsibility as a
23 registered investment advisor is you're not allowed to buy
24 back from investors fund interests or investments unless you
25 offer it to everybody else, in writing, in that fund first.

1 That's the Investment Advisers Act as I understand it, and
2 that is what was improper in the HarbourVest transaction. I
3 mean, besides the fact that the pricing was wrong, they misled
4 HarbourVest. And I know HarbourVest hasn't complained, but
5 just because your investors don't complain doesn't mean you
6 can rip them off.

7 MR. MORRIS: I'd really move to strike the entirety
8 of the answer, Your Honor.

9 THE COURT: Granted.

10 BY MR. MORRIS:

11 Q Mr. Dondero, HC --

12 A I'm not going to -- I'm not answering any more questions
13 unless I can answer that question with that answer, --

14 Q Mr. Dondero, do you --

15 A -- because I believe it's responsive.

16 Q Do you remember that CLO Holdco withdrew their objection?

17 A I --

18 Q To the HarbourVest settlement?

19 A I don't remember.

20 Q Do you remember that's really when Grant Scott left the
21 scene?

22 A I don't --

23 Q He thought it was inappropriate for them to withdraw,
24 right?

25 A I don't remember all the details. I know they made some

1 mistakes, and there's a tolling agreement against Kane's
2 (phonetic) firm for making mistakes, and, you know, whatever.
3 But I -- I don't remember all the details.

4 Q And a couple of months later, you conspired with Mr.
5 Patrick to try to sue Mr. Seery in order to try to get that
6 very same interest in HCLOF, right?

7 MR. MCENTIRE: Your Honor, I have to object. There's
8 no foundation and it's also highly argumentative and I move to
9 object. That's a -- that's a question asked in bad faith.

10 THE WITNESS: I deny any conspiring.

11 MR. MORRIS: Okay.

12 THE COURT: Sustained.

13 BY MR. MORRIS:

14 Q In April, Mr. Patrick filed a lawsuit on behalf of CLO
15 Holdco a couple of weeks after getting appointed as the head
16 of CLO Holdco and the DAF about the HarbourVest settlement.
17 Isn't that right?

18 A I believe so.

19 Q Okay. And you worked with him on that, right?

20 A I -- I did not work with him on that. I was very just
21 tangentially aware.

22 Q Okay.

23 MR. MORRIS: I'm just going to refer the Court -- I'm
24 going to move for the admission into evidence of the second
25 contempt order.

1 THE COURT: Exhibit what?

2 MR. MORRIS: Just one moment, Your Honor.

3 (Pause.)

4 MR. MORRIS: You know what, I don't know that I have
5 it on the list. I'm just going to ask the Court to take
6 judicial notice. We had a hearing two years ago to this day,
7 and the Court found in the order that it entered at the
8 conclusion of that hearing that Mr. Patrick had abdicated his
9 responsibility to Mr. Seery. It's one of the reasons why Mr.
10 Seery wasn't held in contempt of Court. And I'd like -- I'd
11 like Counsel to address it now.

12 MR. MCENTIRE: Yeah, I'll -- you said Seery, didn't
13 you?

14 MR. MORRIS: Oh, sorry. I said Seery. I meant
15 Dondero.

16 MR. MCENTIRE: (faintly) Also, I believe it's
17 entirely irrelevant. Judicial -- taking judicial --

18 THE COURT: Would you speak in the microphone,
19 please?

20 MR. MCENTIRE: I'm sorry. Taking judicial notice of
21 something that is utterly irrelevant is not necessary, not
22 appropriate. What this Court did two years ago roughly to the
23 day -- and I assume he's correct -- has no bearing on anything
24 before the Court today. Nothing. This has zero connection,
25 nexus, under any analysis, any fair scrutiny, dealing with the

1 colorability of the claim that Hunter Mountain, who was not
2 involved in those proceedings, is trying to advance here. And
3 it would be -- it would be improper for this Court to even
4 take it under judicial notice.

5 THE COURT: Okay. Response?

6 MR. MORRIS: Can I respond?

7 THE COURT: Uh-huh.

8 MR. MORRIS: Okay. So, Your Honor, I'm going to move
9 for the introduction into evidence of Exhibit 45. It is the
10 Charitable DAF complaint that was filed in the federal
11 district court on April 12, 2021, under the direction of Mark
12 Patrick, who today stands here as the representative of Hunter
13 Mountain.

14 This was the complaint, if Your Honor will recall, that
15 they tried to amend and we had a hearing here about the
16 circumstances, because that amendment was going to name Mr.
17 Seery personally, in violation of the gatekeeper order.
18 Right?

19 THE COURT: Uh-huh.

20 MR. MORRIS: And so it is all tied together. If you
21 go to Paragraph 77 of this exhibit, it says, HCLOF holds
22 equity in MGM Studio. This is the exact same transaction,
23 right? So, so Mr. Dondero says, I gave Mr. Seery inside
24 information, he violated all of these things in the
25 HarbourVest transaction, even though he didn't say a word

1 then, and here, while it's still on the restricted list,
2 before the Amazon deal is announced, they're actually in court
3 saying that they should be entitled to acquire that same asset
4 that Mr. Seery supposedly acquired improperly. He wants it
5 for himself.

6 I mean, are you kidding me? It's not relevant?

7 THE COURT: I overrule the relevance objection. It's
8 admitted.

9 MR. MORRIS: Thank you. And 45 is admitted, Your
10 Honor?

11 THE COURT: 45 is admitted.

12 MR. MORRIS: Okay.

13 (Debtors' Exhibit 45 is received into evidence.)

14 MR. MCENTIRE: Just, Your Honor, I was identifying my
15 objection in connection with his original request that you
16 take something under --

17 THE COURT: Would you speak in the microphone?
18 Again, we --

19 MR. MCENTIRE: Yes. My original objection was
20 addressing his request of you, Your Honor, to take something
21 under judicial notice. I want to make sure my objection is
22 also lodged with regard to Exhibit 45, which I understand
23 you've overruled.

24 THE COURT: Correct.

25 MR. MCENTIRE: Okay.

1 THE COURT: It is so noted.

2 MR. MORRIS: Okay.

3 THE COURT: You've objected and I've admitted it.

4 MR. MORRIS: And I think I've said this already, but
5 the reason that we're requesting the Court take judicial
6 notice of its order on the second contempt proceeding is
7 because it shows that Mr. Dondero and Mr. Patrick worked
8 together, in violation of the gatekeeper, to try to suit Mr.
9 Seery to obtain the interest in HCLOF that he is sitting here
10 today saying somehow that Mr. Seery wrongfully acquired, even
11 though he didn't say a word at the time.

12 THE COURT: Okay. So now we're talking about not
13 Exhibit 45 --

14 MR. MORRIS: Yes.

15 THE COURT: -- but the order that was entered --

16 MR. MORRIS: Correct.

17 THE COURT: -- regarding the filing of Exhibit 45?

18 MR. MORRIS: Exactly.

19 THE COURT: Someone is going to need to give me a
20 docket entry number before we're done here.

21 MR. MORRIS: Okay.

22 THE COURT: I can and will take judicial notice of
23 that, but I need to have it --

24 MR. MCENTIRE: So I assume, for the record, my
25 objection is overruled?

1 THE COURT: Your objection is overruled.

2 MR. MCENTIRE: Thank you.

3 MR. MORRIS: All right.

4 BY MR. MORRIS:

5 Q You mentioned something about, I think, was it NXDT or
6 NHF?

7 A Yes.

8 Q And just let me see if I can do it this way. Right? So
9 there used to be a fund known as the NexPoint Strategic
10 Opportunities Fund, right?

11 A Yes.

12 Q Okay. And in 2020 that was a closed-in fund. Correct?

13 A Yes.

14 Q And it traded under the ticker symbol NHF, correct?

15 A Yes.

16 Q And then late in 2021 the name of the fund was changed to
17 NexPoint Diversified Real Estate Trust, correct?

18 A Yes.

19 Q And the ticker symbol changed from NHF to NXDT, correct?

20 A Yes.

21 Q And then it became a REIT the following year, right?

22 A Yes.

23 Q And I'm just going to refer to these letters as the Fund;
24 is that fair?

25 A That's fine.

1 Q For purposes of these questions. And you were the Fund's
2 portfolio manager, the president, the principal executive
3 officer, correct?

4 A Yes.

5 Q And another entity that you controlled, NexPoint Advisors,
6 provided advisory services to the Fund, correct?

7 A Yes.

8 Q And you controlled NexPoint Advisors at all times,
9 correct?

10 A Yes.

11 Q Okay. And the Fund was publicly traded, right?

12 A Yes.

13 Q And the Fund owned shares of MGM at the end of 19 -- at
14 the end of 2020, correct?

15 A Yes.

16 Q In fact, as of December 2020, MGM was one of the Fund's
17 ten largest holdings, with -- valued at over \$25 million.
18 Isn't that right?

19 A Yes.

20 Q And by the end of 2021, MGM was the Fund's fifth largest
21 holding, with assets -- with a value of over \$40 million.
22 Correct?

23 A Yes.

24 Q And the Fund also held MGM common stock indirectly; isn't
25 that right?

1 A Yes.

2 Q In fact, when the Amazon deal closed at the -- in March of
3 2022, the Fund issued a press release disclosing that it stood
4 to receive over \$125 million on the MGM shares that it held
5 directly and indirectly. Correct?

6 A We issued several press releases. I don't remember --

7 Q Okay. Do you remember that, that as a result of the MGM
8 sale, the Fund was expected to receive approximately \$126
9 million?

10 A Yes.

11 Q Okay.

12 A Roughly.

13 Q All right. In October 2020, just a few weeks before you
14 sent your email, the Fund announced the commencement of a
15 tender offer to acquire outstanding shares at a certain price.
16 Correct?

17 A Yeah, I believe so.

18 Q And you authorized that, right?

19 A Yes.

20 Q And when a fund acquires shares and then retires them, the
21 shareholders who did not tender consequently own a larger
22 percentage of the fund than they did before the tender,
23 correct?

24 A Yes.

25 Q Okay. And the tender was completed in January, in the

1 first week of January 2001 [sic], correct?

2 A I don't remember when it was complete.

3 Q It started at the end of October 2020, and it ended
4 sometime in January '21. Is that fair?

5 A Okay. I don't remember. Okay.

6 Q Do you want me to refresh your recollection?

7 A I'm just saying I don't remember.

8 Q Yeah, okay.

9 A I'm not dis...

10 Q Okay.

11 A -- denying it. I just don't remember the exact dates.
12 (Discussion.)

13 MR. MORRIS: Your Honor, can I mark for
14 identification purposes Plaintiffs' Exhibit -- I'm just going
15 to call it 100, to see if it refreshes the witness's
16 recollection?

17 THE COURT: You may mark it.

18 MR. MORRIS: Okay.

19 THE COURT: We'll see where it goes from there.
20 (Debtors' Exhibit 100 is marked for identification.)

21 BY MR. MORRIS:

22 Q So, I've put --

23 MR. MCENTIRE: Hold it. Your Honor, I think we're
24 now marking exhibits that we haven't put on an exhibit list.

25 MR. MORRIS: I'm trying to refresh his recollection.

1 MR. MCENTIRE: Okay.

2 MR. MORRIS: Yeah.

3 MR. MCENTIRE: Well, --

4 THE COURT: Yes.

5 MR. MORRIS: Okay? I haven't offered it in -- I
6 haven't offered it --

7 THE COURT: I've not admitted -- I don't know what it
8 is. I haven't admitted it yet. I'm waiting.

9 MR. MORRIS: I haven't offered it into evidence. He
10 said he doesn't remember, --

11 THE COURT: Okay.

12 MR. MORRIS: -- I've got an SEC document here, and
13 I'm going to try and refresh his recollection.

14 THE COURT: Okay.

15 BY MR. MORRIS:

16 Q You're familiar with these forms, right?

17 A Generally.

18 Q In fact, in fact, you sign them in your capacity as the
19 fund portfolio manager, right? Your signature is put on it,
20 anyway?

21 A Generally.

22 Q Yeah. And do you see that this is the Form N-CSR that was
23 filed with the SEC at the end of 2001 [sic] on behalf of
24 NexPoint Diversified Real Estate Trust?

25 A Yes.

1 Q Okay. So if you just turn to Page 16. And the numbers
2 are kind of at the bottom in the middle of the page. You'll
3 see the notes to the consolidated financial statements.

4 A Yes.

5 Q Okay. And Note 1 discusses the organization. Do you see
6 that?

7 A Yes.

8 Q And at the bottom of the left-hand column, it says, On
9 January 8, 2021, the company announced the final result of its
10 exchange offer pursuant to which the company purchased the
11 company's outstanding -- the company's common shares in
12 exchange for certain consideration.

13 Do you see that?

14 A Yes.

15 Q That's a reference to the tender offer that you authorized
16 at the end of October, correct?

17 A Yes.

18 Q And then at the bottom it says, The company share --
19 company -- excuse me. I strike that. It says, quote, The
20 common shares at a price of \$12 per common share, for an
21 aggregate purchase price of approximately \$125 -- \$105
22 million. Upon retirement of the repurchased shares, the net
23 asset value was \$152 million, or \$17.41 million.

24 Do you see that?

25 A Yes.

1 Q Does that refresh your recollection that the tender offer
2 was completed at the beginning of January?

3 A Yes.

4 Q And that's with all of the MGM stock that the Fund still
5 owned at that time, right?

6 A Yeah. We -- we didn't -- we didn't violate --

7 Q You didn't --

8 A We didn't -- we didn't violate like Seery did. We didn't
9 sell any shares or buy shares.

10 Q Okay.

11 MR. MORRIS: I'm going to move to strike that, Your
12 Honor.

13 THE COURT: So granted.

14 MR. MCENTIRE: Well, Your Honor, I've actually got a
15 response to his motion to strike. This entire inquiry is
16 irrelevant.

17 MR. MORRIS: Not --

18 MR. MCENTIRE: This has no relevance at all in
19 connection with the allegations that we're making in this
20 case.

21 THE COURT: Your response?

22 MR. MORRIS: My response, Your Honor, if you ask me
23 -- let me just get a few more questions. He personally owned
24 shares in the Fund. The Fund owned shares in MGM. And
25 notwithstanding the restricted material, this is the insider,

1 and he is benefiting from himself through the Fund's
2 repurchase of these shares in the tender offer, and he went
3 and he had substantial holdings. I'll get to that in a
4 minute.

5 So he is actually doing something worse than what Mr.
6 Seery -- what he accuses Mr. Seery of, because he's buying
7 shares for his own personal benefit. Right? He's the
8 insider. Right? And the Fund owns the shares directly.
9 There's never going to be an allegation that HCLOF ever owned
10 any MGM stock. Never.

11 THE COURT: Okay. I'm going to allow this.
12 Obviously, on redirect, you can further question on this --

13 MR. MCENTIRE: Well, --

14 THE COURT: -- to --

15 MR. MCENTIRE: Well, first of all, his suggestions
16 and his accusations are purely argumentative.

17 THE COURT: Would you please speak in the microphone?
18 We --

19 MR. MCENTIRE: Well, he's standing in the way, Your
20 Honor.

21 THE COURT: Well, --

22 MR. MCENTIRE: It's irrelevant.

23 THE COURT: There are two. There's room for both of
24 you.

25 Continue. Go ahead.

1 MR. MCENTIRE: It's entirely irrelevant, and it's
2 argumentative.

3 THE COURT: Okay. Overruled. You can continue.

4 BY MR. MORRIS:

5 Q You did own an awful lot of the Fund's shares, didn't you?

6 A I owned some.

7 Q You owned some? You owned millions, right?

8 A Yes.

9 Q Okay. And as a result of the tender, you owned a greater
10 interest of the Fund, right?

11 A Yes.

12 Q And therefore you owned a greater number -- a greater
13 portion of the MGM stock, the \$125 million of MGM stock that
14 was owned directly and indirectly by the Fund, correct?

15 A You do know insiders weren't permitted to participate in
16 the tender, which would have kept my percentage the same.

17 Q Sir, you benefitted -- you didn't stop the tender, right?
18 You didn't say, now I know what's going to happen, I should
19 stop it? You benefitted from the tender. Can we just agree
20 on that?

21 A I did everything I was supposed to do, notifying
22 Compliance. If they thought it was material, they would have
23 -- it was in their hands once I notified Compliance of the
24 material --

25 Q Okay.

1 A -- nonpublic information.

2 Q I appreciate that. I just want --

3 A It wasn't my responsibility to do Compliance's job to call
4 you or call --

5 Q Okay.

6 A -- the SEC or call anybody else.

7 Q But you will agree that, even though you had material
8 nonpublic inside information, you didn't take any steps to
9 stop the tender, correct?

10 A The tender was for a relatively small amount of the stock.
11 But I did -- I would -- it would not be my responsibility to
12 change or adjust the tender --

13 Q Okay.

14 A -- or what was happening.

15 Q Okay. And then the last question is, you benefitted from
16 the tender because the Fund repurchased shares, which
17 increased your percentage ownership of the Fund, and therefore
18 your percentage ownership of the MGM shares that were held
19 directly and indirectly. Is that fair?

20 A Marginally, I guess. Yes.

21 Q Okay. From the -- from the millions of shares, you would
22 describe it as marginal? Okay.

23 Let me move on. You've testified now that you spoke with
24 representatives of Farallon in the late spring, I guess
25 beginning on May 28th. Right?

1 A Yes.

2 Q And that was two days after the MGM deal was publicly
3 announced, correct?

4 A Yes.

5 Q Okay. And had you ever communicated with Mr. Patel before
6 that phone call?

7 A I don't believe so.

8 Q And then you spoke with Mr. Linn shortly after?

9 A Yes.

10 Q Had you ever spoken with Mr. Linn before that phone call
11 with Mr. Linn?

12 A I don't believe so.

13 Q So these phone calls were the very first time that you
14 ever spoke to either one of these gentlemen. Is that right?

15 A That I can remember.

16 Q Okay.

17 A If I ran into them at --

18 Q Uh-huh.

19 A -- a conference a decade ago, I don't know, but --

20 Q And they told you that they bought the shares in the
21 February-March time frame, right?

22 A Yes.

23 Q And you have no reason to dispute that, correct?

24 A Correct.

25 Q Okay. And you didn't know how much they had paid for the

1 claims as a result of these conversations, correct?

2 A They did not admit a price.

3 Q Okay. And it's your testimony that there wasn't
4 sufficient information in the public for them to buy -- this
5 is your view -- that there wasn't sufficient information in
6 the public to justify their purchases. Is that your view?

7 A Correct.

8 Q And even though you didn't think there was sufficient
9 information in the public, you were prepared to pay 30 percent
10 more than they did, right?

11 A Yes.

12 Q And is that because you were 30 percent more irrational
13 than them or because you had material nonpublic inside
14 information?

15 MR. MCENTIRE: Objection. Argumentative, Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: Even at a 30 percent premium, it was
18 less than I offered the UCC several months earlier, number
19 one.

20 Number two, I was still under the illusion there was a
21 desire to resolve the place, not burn it down. You know,
22 there was -- all the original members were happy to sell at
23 \$150 million. It was a \$500 or \$600 million estate. There
24 should be \$400 or \$500 million of residual value. It
25 shouldn't all be going out the door to lawyers and others.

1 BY MR. MORRIS:

2 Q You were willing to pay 30 percent more for an unknown
3 purchase price, 30 percent more of an unknown purchase price,
4 at a moment that you didn't believe there was sufficient
5 information to buy the claims, correct?

6 A You have a couple misstatements in there. The Grosvenor
7 piece was public. The Grosvenor piece traded at \$67 million.
8 So we knew that piece trade at around 50 cents. We knew from
9 people in the marketplace the other pieces were trading right
10 around that level.

11 So I wasn't just offering 30 percent on any willy-nilly
12 number, 130 percent of any willy-nilly number. I knew they
13 had paid around 50, 60 cents. And so I was offering 30
14 percent more than that. Thirty percent more than \$150
15 million, call it \$200 million. I had offered \$230 or \$240
16 million to resolve the whole estate before the plan went
17 effective, and I got no response from the original UCC
18 members.

19 Q So why didn't you just try to settle the case with them?
20 Why did you try to buy the claim? Why, if you had these new
21 people, and your good intentions were to finally get to a
22 settlement of the case, why didn't you say, hey, guys, how do
23 we resolve the case? Why did you want to buy the claims at a
24 30 percent premium over what they paid with no knowledge and
25 no diligence, according to you? Can you explain that to Judge

1 Jernigan?

2 A Because Seery told them to hold on, don't worry, they were
3 going to make \$270 million.

4 Q That doesn't answer my question. Why didn't you try --
5 you had new owners. Why didn't you try to settle with them?

6 A When someone owns an asset, buying their asset is settling
7 with them. What claim does Farallon have against us? At that
8 point, they had no claims against us.

9 Q It doesn't settle the case, does it?

10 A But if we owned all the claims, it would settle the case.
11 Just like if Seery had objected to the claims trading that
12 they were supposed to give written notice to the Court, he had
13 enough cash on the balance sheet to buy and retire all the
14 claims.

15 Q All right. Let's go back, I apologize, to that Exhibit
16 11. No, it's not Exhibit 11. I think it's their Exhibit 4,
17 your notes.

18 MR. MORRIS: Your Honor, may I have -- just have one
19 moment?

20 THE COURT: You may.

21 MR. MORRIS: Can you tell me how long I've been
22 going? That's really my question.

23 THE CLERK: So, on cross, --

24 MR. MORRIS: Yeah.

25 THE CLERK: -- you've been going for 32 minutes.

1 MR. MORRIS: Okay. Trying to speed this up.

2 BY MR. MORRIS:

3 Q All right. So, do we have your handwritten notes, which
4 are Exhibit 4, in this binder? Oh.

5 THE COURT: Do you want to put it up again on the
6 screen?

7 MR. MORRIS: Ms. Canty, if you're listening and you
8 can do that, that would be great. If not, --

9 (Discussion.)

10 MS. CANTY: One second, John.

11 MR. MORRIS: All right. He -- he's got it.

12 THE COURT: Okay.

13 BY MR. MORRIS:

14 Q Okay. So, I just -- I just want to make -- you know,
15 follow up on a few questions I asked you earlier on *voir dire*.
16 So, these are your notes, right, and you said you write down
17 the important stuff. Correct?

18 A I write down, yeah, the stuff I thought I would need for
19 the next call.

20 Q Okay. And, you know, again, just so we have it all in one
21 spot, it doesn't say anything about MGM. Correct?

22 A It does not.

23 Q It doesn't say anything about a *quid pro quo*, correct?

24 A *Quid pro*? Uh, no, it does not.

25 Q It doesn't say anything at all about Mr. Seery's

1 compensation, correct?

2 A It does not.

3 Q It doesn't say anything about the sharing of material
4 nonpublic inside information, correct?

5 A When I told them discovery was coming, that was my
6 response to I knew they had traded on material nonpublic
7 information.

8 Q Okay. That -- you told them that?

9 A Yes.

10 Q Is that what you're saying now?

11 A Yes.

12 Q Oh, so that's what you told them? They didn't tell you
13 that; that's what you told them?

14 A Yes.

15 Q And that's why you wanted discovery, right?

16 A I thought it would be a lot easier to get discovery on a
17 situation like this than it has been for the last two years,
18 yes.

19 Q Okay. Um, --

20 A In fact, I told them that it would be coming in the next
21 few weeks. And this has been a couple years.

22 Q And that's exactly what you did, right?

23 A Well, we've been trying for two years to get --

24 Q Right.

25 A -- discovery in this.

Dondero - Cross

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1 Q Okay. So you filed your Texas 202, right?

2 A I don't know who filed what.

3 Q That was the one by Mr. Sbaiti that was filed under your
4 name? Do you remember that?

5 A Generally.

6 Q Okay. Let's take a quick look at that document. It's #3
7 in our binder.

8 A Binder #3?

9 (Discussion.)

10 MR. MORRIS: Okay. I think #3 is in evidence, Your
11 Honor.

12 THE WITNESS: Number 3 is in evidence.

13 THE COURT: Yes.

14 MR. MORRIS: Okay.

15 THE COURT: It is.

16 BY MR. MORRIS:

17 Q And if you can turn to the last page, Mr. Dondero. Page
18 8.

19 A Yes.

20 Q Okay. And that's your signature, right?

21 A Yes.

22 Q And you verified that this document was true and correct
23 within the best of your personal knowledge, correct?

24 A Yes.

25 Q Did you read it before you signed it?

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1 A Probably.

2 Q You don't recall doing that?

3 A Not at this moment.

4 Q And you may not have. Is that fair?

5 A No, I probably did. Do you have a question?

6 Q I'm just wondering if you signed it or not.

7 A I did sign it.

8 Q Okay. Good. So, can you go to Paragraph 21? Well, let's
9 start at Paragraph 20. It says that Mr. Seery, quote, has an
10 age-old connection to Farallon, and upon information and
11 belief, advised Farallon to purchase the claims.

12 Do you see that?

13 A Yes.

14 Q And then the next paragraph you refer to the telephone
15 call that you had with Michael Linn, right?

16 A Yes.

17 Q It doesn't refer to any phone call with Mr. Patel,
18 correct?

19 A It does not.

20 Q And the only reason that you swore under oath you were
21 told that Farallon purchased the claims was because of
22 Farallon's, quote, prior dealings with Mr. Seery. Correct?
23 In Paragraph 21, it says, Relying entirely on Mr. Seery's
24 advice solely because of their prior dealings?

25 A Yes.

1 Q Okay. You didn't -- you didn't swear under oath at that
2 time that you were told that they bought the claims because of
3 MGM. Right?

4 A If you're asking if this is -- it seems like it's not
5 complete, if that's what you're asking me.

6 Q I'm not asking you that. I'm asking you what -- I'm
7 asking you to confirm that you swore under oath to the Texas
8 state court, just weeks after you had these conversations,
9 about what you were told concerning Farallon's purchase of the
10 claims.

11 I'm focused on Paragraph 21. The only reason that you
12 gave, that you told the Texas state court under oath, was that
13 Farallon told you they bought their claims because of their
14 prior dealings with Seery. Right?

15 A Yeah. And that's true. And that's consistent with what
16 I've said.

17 Q Okay. You didn't say anything about MGM, correct?

18 A Correct.

19 Q You didn't say anything about a *quid pro quo*, correct?

20 A Correct.

21 Q You didn't say anything about Mr. Seery's compensation.
22 Correct?

23 A I did not.

24 Q You didn't say anything about the sharing of material
25 nonpublic inside information, correct?

1 A Different document, different purposes.

2 Q Well, but that's now two documents. You have your notes
3 and you had this document, neither one of which say any of
4 those things. Fair?

5 A Different documents, different purposes. I don't know if
6 that's --

7 Q Is it fair that neither one of those documents say any of
8 those things?

9 A It's fair that they don't all match.

10 Q Okay. Okay. Well, that's a fair statement. Let's go to
11 the next one. Do you remember the next year you filed an
12 amended petition?

13 A What tab?

14 Q That's -- I appreciate that. It's Tab 4. Do you see at
15 the last page you've again signed a verification?

16 A Yep.

17 Q And do you see this one's filed with the Texas state court
18 on May 2, 2022?

19 A Yes.

20 Q And you swore under oath that this statement was complete,
21 true, and accurate to the best of your knowledge, correct?

22 A Yes.

23 Q Okay. Can you go to Page 5, please?

24 A Yes.

25 Q Directing your attention to Paragraph 23, do you see where

1 you say now that Farallon was relying, quote, on Mr. Seery's
2 say-so because they had made so much money in the past when
3 Mr. Seery told them to purchase claims.

4 Do you see that?

5 A Yes.

6 Q Again, you don't say anything about MGM, correct?

7 A Correct.

8 Q Again, you don't say anything about material nonpublic
9 inside information, correct?

10 A Well, on 24 it does. Right? Mr. Seery had inside
11 information on the price and value of claims. So, you've got
12 to look at all of the bullet points.

13 Q But that's not the paragraph where you're talking --
14 that's -- it says, in other words. That's not the paragraph
15 where you're describing your conversation with Farallon.
16 That's your interpretation of it, correct, just as you just
17 said?

18 A (no immediate response)

19 Q You told -- I'm sorry. I should let you finish the
20 answer. That's your interpretation of it, correct?

21 A Well, I'm reading all the bullets in aggregate, and it's
22 -- it's a picture of material information shared by Seery, not
23 just MGM or one particular investment, but on all the other
24 assets that aren't detailed in any of the public filings,
25 also.

1 Q The only -- the only point I want to make, I think we can
2 agree on this --

3 A Okay.

4 Q -- is that you believed that Mr. Seery gave them material
5 nonpublic inside information. Farallon never told you that.
6 Isn't that true? That's why you wanted discovery?

7 A They said they relied on him and did no diligence of their
8 own. They were very express -- explicit about that.

9 Q Okay. Can you answer my question now?

10 A Which -- I thought -- that does, --

11 Q You concluded --

12 A -- yes.

13 Q -- that Mr. Seery gave them material nonpublic inside
14 information. They never told you that. Fair?

15 A They said they relied on -- solely on Seery, didn't buy it
16 for any other reason, and they did no due diligence of their
17 own.

18 Q Okay. Let's go to the next one. Now, the no-due-
19 diligence part, that's not in any version we've seen, right?
20 That's something that you just --

21 A No, no, --

22 Q -- that you're just testifying to now? That's not in your
23 notes, it's not in Version 1, and it's not in this version,
24 correct?

25 A Well, let's go back to the Linn one, because when I was

1 going back and forth and he wouldn't give a price, he kept
2 saying, Seery told us it's worth a lot more. And I kept
3 saying, you've got to look at the burn, you've got to look at
4 the professionals. And --

5 Q Okay.

6 A -- that's --

7 Q Shortly after this, you filed yet another declaration,
8 right?

9 A Yes.

10 Q Uh-huh. Can you turn to #5? And this is another version
11 of your recollection of what you were told, correct? In
12 Paragraph 2?

13 A These are all -- I don't know why you're saying they're
14 different. They're all the same. They're just slightly
15 different verbiage. What's the major difference between any
16 of them?

17 Q I'll ask, I'll ask you the question. The question is, you
18 had never written in any of the prior versions that they
19 didn't do any due diligence; isn't that right? You never --
20 you never talked about their due diligence in any prior
21 version, correct?

22 A It's all -- it's all the same version. I don't -- some
23 versions --

24 Q Can you answer my question?

25 A I don't know. I don't know --

1 Q Which --

2 A -- which ones included which -- I don't --

3 Q We've just looked at them. Do you want to look at them
4 again?

5 A I just looked at one page in the other one and it was five
6 pages. I just looked at the one page and I found two or three
7 things --

8 Q Your notes --

9 A -- it didn't include, but --

10 MR. MORRIS: You know what. I don't want to argue.
11 They say what they say, Your Honor, and I would ask the Court
12 to look carefully at our objection to the motion because we
13 lay all of this out.

14 Your Honor can -- here's the point, because I do want to
15 finish up right now. There are five different versions of
16 this conversation. They're laid out in the brief. And the
17 question that you have to ask yourself, Your Honor, is, if you
18 allow this case to go forward, how do they make a colorable
19 claim when the story keeps changing?

20 And I'll just leave it at that, because, you know, the
21 last version says MGM for the first time. Like, it comes out
22 of nowhere. This -- his notes don't say it, he hasn't
23 testified that that's what he was told, but somehow that's in
24 his sworn statement.

25 So I'm just going to rest on the papers, because this is

1 -- I don't want to be argumentative.

2 THE COURT: Okay.

3 MR. MCENTIRE: Well, I'll object to the argument of
4 counsel. He's just doing another opening statement here, and
5 it's inappropriate and not proper.

6 THE COURT: Okay. I agree. This is Q and A.

7 MR. MORRIS: Okay.

8 THE COURT: So, --

9 BY MR. MORRIS:

10 Q Do you know -- do you have any knowledge or information as
11 to how Mr. Seery's compensation was established?

12 A Uh, --

13 Q Withdrawn. I'm talking now not in his capacity as an
14 independent director or the CEO of the Debtor. I'm only
15 talking about in his capacity as the CEO of the Reorganized
16 Debtor and the Claimant Trustee. Do you have any personal
17 knowledge as to how his compensation was established?

18 A The knowledge I have is that the Claimant Trust gives full
19 latitude to change it at almost any time they want. Add more
20 to it, add more than that we've seen, double it in the future
21 if reserves are reversed. It can do anything it wants. And I
22 guess we've seen some redacted partial statements of his
23 compensation, but that's all I know.

24 Q Okay. You have no knowledge about how Mr. Seery's
25 compensation package was determined, correct?

Dondero - Redirect

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1 A I was not involved.

2 Q Okay. You've never -- I'll just leave it at that.

3 MR. MORRIS: I have nothing further, Your Honor.

4 THE COURT: Okay. Pass the witness. I'm sorry, I
5 guess I should ask, do any of the other responding parties
6 have examination?

7 MR. STANCIL: No, Your Honor.

8 THE COURT: No? Okay. Redirect?

9 MR. MCENTIRE: Just very briefly, Your Honor.

10 THE COURT: Okay.

11 MR. MCENTIRE: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MCENTIRE:

14 Q Mr. Dondero, you remember the questions about Judge
15 Jernigan walking into the courtroom on June 8 two years ago
16 saying, MGM is sold, maybe we can settle this case? Do you
17 recall those questions?

18 A Yes.

19 Q And do you remember Mr. Morris's dramatic suggestion that,
20 well, how did Judge Jernigan know, or to that effect?

21 A Yes.

22 Q Well, that had already been announced, had it not,
23 publicly?

24 A Yes.

25 Q Several weeks before?

009658

1 A Yes.

2 Q I'd like to direct your attention -- do you still have
3 Exhibit 4 that he handed you? Do you have Exhibit 4 there?

4 A Uh, --

5 Q His exhibit?

6 A Is that the notes?

7 Q No, it's -- Exhibit 4 is the verified amended petition to
8 take deposition before suit -- take -- in the state court. To
9 -- deposition.

10 A You've got to give me more of a clue. I'm sorry. There's
11 like six binders.

12 MR. MCENTIRE: Mr. Morris, can you show us where the
13 exhibit --

14 MR. MORRIS: Sure. Which one is it?

15 MR. MCENTIRE: It's Exhibit 4. I'm going to talk to
16 him about Exhibit 4 (inaudible) that you've have used with
17 this witness.

18 BY MR. MCENTIRE:

19 Q I assume -- Mr. Dondero, were you assuming from the tone
20 and the substantive content of his questions that Mr. Morris
21 is suggesting that your notes are not reliable?

22 A He was trying to make it seem like the versions were
23 different. They were all 90 percent the same. Different --
24 it seemed like different emphasis for different purposes. And
25 then you have to remember we learned more about Farallon and

1 Stonehill over time. Like, in the beginning, when I had --
2 when I -- we didn't even know Stonehill was involved when I --

3 Q Sure.

4 A -- first talked to -- when --

5 Q Well, he made the big suggestion about you never talked
6 about due diligence before. Turn to Exhibit 4, Paragraph 23,
7 which he did not address with you. Can you turn to Paragraph
8 23 of Exhibit 4? Mr. Morris omitted to refer you to this
9 particular paragraph.

10 A 23? Go ahead.

11 Q Would you read it into the record?

12 A (reading) On a telephone call between Petitioner and
13 Michael Linn, a representative of Farallon, Michael Linn
14 informed the Petitioner Farallon had purchased the claim
15 sight-unseen and with no due diligence, a hundred percent
16 relying on Mr. Seery's say-so, because they had made so much
17 in the past with Mr. -- when Mr. Seery had (overspoken).

18 Q Now, since you've an opportunity to see other paragraphs
19 and other -- that he was otherwise not selecting, you did
20 refer to the -- to what Mr. Linn had told you about in May of
21 2021?

22 A Yes. I've been very consistent. Listen, I believe
23 Farallon tapes all their conversations. So, eventually, as
24 this goes further, I purposefully --

25 Q Well, let's --

1 MR. MORRIS: I move to strike, Your Honor.

2 THE WITNESS: Okay.

3 THE COURT: Sustained.

4 BY MR. MCENTIRE:

5 Q He also did not direct your attention or the Court's
6 attention to Paragraph 27 of Exhibit 4, selecting --
7 presumably strategically selecting not to refer to that
8 paragraph. Do you see Paragraph 27?

9 A Yes.

10 Q Could you read that into the record, please?

11 A (reading) However, Mr. Seery is privy to material
12 nonpublic information, inside information of many of the
13 securities that Highland deals in, as well as the funds that
14 Mr. Seery manages through Highland. One of these assets was a
15 publicly-traded security that Highland was an insider of, and
16 therefore should not have traded, whether directly or
17 indirectly, given its possession of insider information.

18 Q Isn't that paragraph just basically addressing MGM?

19 A Yeah, that's the only major position we had that that
20 would apply to.

21 Q So the suggestion that you're just making this MGM stuff
22 up is not true. It's consistent with what you've (inaudible)
23 in other courts as well, correct?

24 A Yes. I believe it's disingenuous to say that there's
25 different versions of my story.

1 Q Well, let's continue with Mr. Morris's strategy. Go to
2 Exhibit 3, please. Mr. Morris suggested that there's no
3 reference at all in any of these prior pleadings about Mr.
4 Seery's excess conversation. Do you recall that series of
5 questions?

6 A Yes. Or his statements, yes.

7 Q Yes. And he did not direct your --

8 MR. MORRIS: I move to strike. I asked him if he had
9 any knowledge of the man's compensation package. That's what
10 I asked him.

11 MR. MCENTIRE: No, sir. Your Honor, that's not what
12 he asked him. That was one of the questions he asked. The
13 other question was, there's nothing in here about
14 compensation. That's what I'd like to address now.

15 MR. MORRIS: Oh, go right ahead.

16 THE COURT: Okay.

17 BY MR. MCENTIRE:

18 Q Directing your attention --

19 THE COURT: You can ask. I'd have to go back and
20 check the record whether you had that second question you
21 mentioned. I remember questions about does he have knowledge
22 of Seery's compensation. I just can't remember if he asked,
23 --

24 MR. MCENTIRE: Fair enough.

25 THE COURT: -- were there references to it in the --

1 MR. MCENTIRE: Well, --

2 THE COURT: -- prior pleadings.

3 MR. MCENTIRE: -- for the record, we'll make it clear
4 that there is a reference.

5 BY MR. MCENTIRE:

6 Q If I could direct your attention to Paragraph 23, Exhibit
7 -- as to --

8 MR. MORRIS: What exhibit is it?

9 MR. MCENTIRE: It's Exhibit 3.

10 MR. MORRIS: Hold on one second.

11 MS. MUSGRAVE: Your exhibit.

12 THE COURT: Highland's Exhibit 3.

13 MR. MORRIS: Give me a moment.

14 THE COURT: Page what?

15 MR. MCENTIRE: It's Paragraph 22 on Page 5.

16 THE WITNESS: I'm sorry. My Exhibit 3?

17 BY MR. MCENTIRE:

18 Q Could you read for me, please, Mr. --

19 MR. MORRIS: Hold on one second. It's my Exhibit 3
20 or your exhibit?

21 MR. MCENTIRE: It's your exhibit. This is Hunter
22 Mountain's binder.

23 MR. MORRIS: Ah, I apologize.

24 MR. MCENTIRE: You were just using it.

25 MR. MORRIS: Okay. All right. Go ahead. What

1 paragraph were you?

2 BY MR. MCENTIRE:

3 Q I'd direct your attention, Mr. Dondero, to Paragraph 22.

4 MR. MORRIS: Yeah.

5 BY MR. MCENTIRE:

6 Q Would you read -- would you read Paragraph 22 into the
7 record, please?

8 A (reading) Mr. Seery had much to gain by brokering a sale
9 of the claim suggested to Muck, mainly his knowledge that
10 Farallon as a friendly investor would allow him to remain as
11 Highland's CEO with virtually unfettered discretion to
12 administer Highland. In addition, Mr. Seery's written
13 compensation package incentivized him to continue the
14 bankruptcy for as long as possible.

15 Q There was also a series of questions to you about a
16 transaction involving NexPoint -- NexPoint Diversified Real
17 Estate Trust. Do you recall those questions?

18 A Yeah. Let's talk about that.

19 Q All right. Tell me what the transaction was.

20 A I'm sorry. The tender that he was asking about or --

21 Q Yes, the tender.

22 A There was -- investors wanted some shares retired, and we
23 didn't have enough cash on the balance sheets. So we tendered
24 in the form of giving them Preferred, which was like equity
25 but a better dividend or a more secured dividend, and 20

1 percent cash. And then insiders weren't allowed to
2 participate. But the whole tender was only for eight or ten
3 percent of the nominal amount outstanding. And again, you've
4 got a package of securities, so you didn't get any -- you
5 didn't cash. And although it reduced the share count, it also
6 increased the Preferred or the claims against the company. So
7 it was marginally accretive, I guess.

8 Q All right.

9 A But, again, as far as inside information is concerned,
10 Compliance is a separate party organization that reports up to
11 the SEC. Has a dotted line to me. Reports to the SEC. They
12 make sure everything we do is compliant.

13 Q Mr. Dondero, --

14 A Yeah. Can --

15 Q -- you didn't participate in the transaction, did you?

16 A No. Insiders weren't allowed to participate in the
17 transaction.

18 MR. MCENTIRE: Reserve the rest of my questions, Your
19 Honor.

20 THE COURT: Any recross?

21 RECROSS-EXAMINATION

22 BY MR. MORRIS:

23 Q The reference to the compensation that we just looked at,
24 that was your own personal view, not something that anybody
25 from Farallon ever told you, correct? You can go back and

1 look.

2 A Yeah, that --

3 Q I mean, it's not a trick question.

4 A Yeah, that was my pleading.

5 Q Okay. And that was your own speculation, if you will? It
6 had nothing to do with anything Farallon ever told you,
7 correct?

8 A I never discussed Seery's compensation with Farallon.

9 Q Okay. Thank you, sir, very much. Just one last question.
10 The price of the tender --

11 A Yes.

12 Q -- was based in part on the value of the MGM stock,
13 correct?

14 A The tender was based on market price --

15 Q And --

16 A -- of where the closed-in fund was trading. It was
17 trading at a discount. And the discount to NAV, the NAV
18 included MGM accurately marked at whatever time.

19 Q I appreciate that.

20 MR. MORRIS: No further questions, Your Honor.

21 THE COURT: All right. Mr. Dondero, that concludes
22 your testimony.

23 THE WITNESS: Thank you.

24 THE COURT: You are excused from the witness box.

25 (The witness steps down.)

1 THE COURT: We probably should take a break, right?

2 MR. MORRIS: Okay.

3 THE COURT: Caroline, do you want to give them the
4 aggregate time used?

5 THE CLERK: Yes. The Defendants used 91 minutes
6 right now. And the Respondents together, 86 minutes.

7 THE COURT: Okay. I thought it was going to be
8 higher than that.

9 (Laughter.)

10 MR. MCENTIRE: That's what it feels like.

11 MR. MORRIS: You were wishing.

12 THE COURT: I was wishing. Okay. A ten-minute
13 break.

14 THE CLERK: All rise.

15 (A recess ensued from 3:17 p.m. until 3:28 p.m.)

16 THE CLERK: All rise.

17 THE COURT: All right. Please be seated. We're back
18 on the record in the Highland matter. Mr. McEntire, you may
19 call your next witness.

20 MR. MCENTIRE: Your Honor, Hunter Mountain would call
21 Mr. Seery adversely.

22 MR. STANCIL: Your Honor, we're waiting for Mr.
23 Morris for just 60 more seconds. I think he's on his way back
24 to the courtroom.

25 THE COURT: Okay. I just noticed.

Seery - Direct

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1 Did I hear you say you're going to call him virtually?

2 MR. MCENTIRE: Adversely.

3 THE COURT: Oh, adversely? Okay. I'm so used to
4 hearing the word "virtually" the past few years.

5 Oh, and there he is. Okay.

6 MR. SEERY: I'm sorry, Your Honor.

7 THE COURT: Mr. Seery, welcome.

8 MR. SEERY: Good afternoon, Your Honor.

9 THE COURT: Please raise your right hand.

10 (The witness is sworn.)

11 THE WITNESS: I do.

12 THE COURT: All right. You may be seated.

13 JAMES P. SEERY, JR., HUNTER MOUNTAIN INVESTMENT TRUST'S

14 ADVERSE WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. MCENTIRE:

17 Q Mr. Seery, would you please state your full name for the
18 record?

19 A James P. Seery, Jr.

20 Q And you and I met for the first time I believe it was last
21 Friday in your deposition; is that correct?

22 A You were by video.

23 Q I mean, --

24 A We didn't actually meet.

25 Q Correct. You are currently the CEO of the Reorganized

009668

Seery - Direct

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1 Debtor?

2 A That's correct.

3 Q Prior to your appointment as the CEO of the Reorganized
4 Debtor, you've never served as a CEO of a reorganized debtor
5 in the past, have you?

6 A I have not.

7 Q You previously served as the chief executive officer of
8 Highland Capital as a Debtor-In-Possession. Is that correct?

9 A That's correct.

10 Q And that was the first time you'd ever served in a
11 position such as that; is that correct?

12 A As the CEO of a debtor, yes.

13 Q Right. You also now currently serve as a Trustee for the
14 Highland Claimant Trust, which was put into effect after the
15 effective date of the plan, correct?

16 A Yes, I'm the Claimant Trustee.

17 Q All right. That's the first time --

18 THE COURT: Mr. McEntire, we usually require standing
19 at the podium. I mean, do you need --

20 MR. MCENTIRE: That's fine. I'm totally fine.

21 THE COURT: Okay. That's --

22 MR. MCENTIRE: I forgot.

23 THE COURT: Okay. Thank you.

24 BY MR. MCENTIRE:

25 Q That was -- and your capacity as the Trustee for the

009669

Seery - Direct

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1 Claimant Trust, that's a first experience as well, correct?

2 A As the Claimant Trustee, yes.

3 Q All right. And in these various capacities as a CEO of
4 the Reorganized Debtor, do you consider yourself to be subject
5 to the Investment Advisers Act?

6 A No, I don't I'm subject to the Investment Advisers Act. I
7 think Highland in certain capacities could be.

8 Q All right. But do you have any duties that -- that you
9 are required to fulfill under the Investment Advisers Act
10 accordingly?

11 A Do I?

12 Q Yes.

13 A I believe Highland does. I don't know that I have any
14 personal duties.

15 Q All right, sir. Let me now talk a little bit about your
16 duties that you did have at Highland. You agree that when you
17 were at Highland you had fiduciary duties that you owed to the
18 estate?

19 A Yes.

20 Q What were those duties?

21 A To generally treat the estate on an honest and fair
22 matter.

23 Q Avoid conflicts of interest?

24 A Yes.

25 Q Not self-deal?

009670

Seery - Direct

214

1 A Yes.

2 Q Do you agree with me that you would have a duty not to
3 trade on material inside -- material nonpublic information?

4 A Generally, I would have a duty to not trade on material
5 nonpublic information, yes.

6 Q Can you think of an exception?

7 A There may be. I just don't think of any one off the top
8 of my head.

9 Q So, today, you would agree, for purposes of these
10 proceedings, that you would have an obligation as the CEO of
11 the Debtor-In-Possession not to participate in a transaction
12 involving material nonpublic information? Agreed?

13 A It would depend. So, for example, if I was trading with
14 someone else who had material nonpublic information, that
15 might be a permissible transaction.

16 Q The HarbourVest transaction, you were involved in
17 negotiating the HarbourVest settlement?

18 A Yes, I was.

19 Q Did that involve any component related to MGM stock?

20 A No, it did not.

21 Q There was no involvement at all concerning the transfer of
22 MGM stock to any entity as a result of that transaction?

23 A None whatsoever.

24 Q Okay. And does HCLOF not have a participation at this
25 time in MGM stock?

009671

Seery - Direct

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1 A We call it H-C-L-O-F.

2 Q Yes.

3 A It does not own MGM stock, and as far as I know, never
4 owned MGM stock.

5 Q Okay. You agree you received an email from Mr. Dondero in
6 December of 2020. We've had it here before. You've seen it
7 in the courtroom, correct?

8 A Yes.

9 Q Okay. Did you ever send -- forward that email to anyone
10 else?

11 A I'm sorry. Could you repeat that?

12 Q Did you forward that email on to anyone else?

13 A I believe I did, yes.

14 Q To whom?

15 A I certainly discussed it with counsel. I believe I
16 forwarded it to counsel, both the Pachulski firm and the
17 WilmerHale firm. Thomas Surgent had gotten it. He was on the
18 email. And I also forwarded it, I believe -- certainly,
19 discussed it -- with the other independent directors.

20 Q Okay. I'm not going to talk about your conversations with
21 other lawyers in-house, okay, or your outside counsel. Did
22 you take any steps yourself personally to make sure that MGM
23 stock was placed on a restricted list at Highland Capital
24 after you received that email?

25 A No. MGM was already on the restricted list at Highland

009672

Seery - Direct

216

1 Capital.

2 Q Okay. And is that because of Mr. Dondero's position on
3 the board of MGM?

4 A It -- I believe that's the reason. It was on before I got
5 to Highland.

6 Q Okay. And you agree, do you not, sir, that the email that
7 you received from Mr. Dondero also contained material
8 nonpublic information?

9 A I don't think so, no.

10 MR. MCENTIRE: Would you put up Exhibit -- our
11 Exhibit 4, please?

12 MR. MORRIS: 4?

13 MR. MCENTIRE: 4.

14 BY MR. MCENTIRE:

15 Q Did H-C-L-O-F -- I'll refer to it as HCLOF, you refer to
16 it as H-C-L-O-F -- did that -- did HCLOF own any funds that
17 owned MGM stock?

18 A HCLOF had interest in certain Highland-managed CLOs that
19 did own some.

20 Q As a result of the Highland settlement -- excuse me, the
21 HarbourVest settlement, was there any impact on who owned some
22 of those CLO funds?

23 A No.

24 Q Okay. How was the CLOs, the funds, handled, if at all, in
25 the -- in the HarbourVest settlement?

009673

Seery - Direct

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1 A They didn't have any impact whatsoever on the HarbourVest
2 settlement.

3 Q Looking at Exhibit 4 for a moment, please, did the
4 interests, did the interests in -- HarbourVest's interests in
5 any of those CLOs transfer?

6 A No, they did not.

7 Q Okay. And did HCLOF acquire any interest in any of those
8 CLO's as a consequence of the HarbourVest settlement?

9 A No, it did not.

10 Q Looking at Exhibit 4. Excuse me, Exhibit 3 is what I
11 meant to say. Exhibit 3.

12 THE COURT: Hunter Mountain Exhibit 3?

13 MR. MCENTIRE: Yes, ma'am.

14 THE COURT: Okay.

15 MR. MCENTIRE: Yes, Your Honor. Excuse me.

16 BY MR. MCENTIRE:

17 Q This is the email that we were just referring to that you
18 received, correct?

19 A Yes.

20 Q And you don't think -- you knew that Mr. Dondero was on
21 the board of directors of MGM?

22 A Yes.

23 Q And he -- as a member of the board of directors, when you
24 received this, you see where he indicated that it was probably
25 a first-quarter event? Do you see that?

009674

Seery - Direct

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1 A I see what it says, yes.

2 Q Okay. And you did not think that that was material
3 nonpublic information?

4 A No, I did not.

5 Q When he indicated that Amazon and Apple were actively
6 diligencing -- are diligencing in the data room, both continue
7 to express material interest, coming from a member of the
8 board of directors of MGM, you did not think that was material
9 nonpublic information?

10 A I did not, no.

11 Q You know the difference between a newspaper article or a
12 media article that discusses rumors of a possible sale and the
13 difference between that and a member of the board of directors
14 saying that a sale is going to occur? You understand the
15 difference between the two?

16 A Between the two things you just outlined?

17 Q Yes.

18 A Yes. One you said a sale is going to occur, and the other
19 you said a media report. But it would depend on what's in the
20 media report. Some media reports are pure speculation.

21 Others have a lot of detail, and they clearly came from an
22 inside source, and that's why the market moves on them.

23 Q Okay. So what you're suggesting to me, that there was
24 some indication in the media press before you received this
25 email suggesting that there was actually going to be a sale in

009675

Seery - Direct

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1 the first quarter of 2021?

2 A I don't know if it had a first-quarter event in it, but
3 certainly it was clear from the media reports and the actual
4 quotes from Kevin Ulrich of Anchorage, who was the chairman at
5 MGM, that a transaction had to take place very quickly. And
6 in fact, the transaction did not take place in the first
7 quarter.

8 Q Okay. So you -- when you received this particular email,
9 you did not think that it was requiring any additional
10 protection at -- in any way? Is that what you're suggesting
11 to this Court?

12 A That the email required additional protection?

13 Q That you didn't take additional steps to make sure that it
14 was maintained on the restricted list.

15 A It was already on the restricted list, so there was no
16 change.

17 Q Was it --

18 A I --

19 MR. MORRIS: Hold on. Let him finish.

20 BY MR. MCENTIRE:

21 A I was suspicious when I got the email, but I didn't think
22 I had to do anything else than the steps I told you I just
23 took.

24 Q Yeah, I'm not asking whether you were suspicious or not.
25 My question's a little bit different. You understand that MGM

009676

Seery - Direct

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1 was taken off your restricted list in April of 2021?

2 A I understand that that's what you've recently shown me. I
3 wasn't aware of that fact or I didn't have a recollection of
4 that fact, but certainly April of 2021 would be beyond the
5 first quarter. Mr. Dondero was not an employee, an affiliate,
6 subject to a contractual relationship. He had no duty to
7 Highland and Highland had no duty to him. And in fact, it was
8 quite antagonistic by that time. So it would be appropriate
9 to take MGM off the restricted list at the end of that time.

10 Q Well, hopefully you won't take this as argumentative, but
11 I object as nonresponsive. That really wasn't my question.
12 Okay? My question --

13 THE COURT: Sustained.

14 BY MR. MCENTIRE:

15 Q -- is a little bit different. As far as you were
16 concerned, MGM was on the restricted list and stayed on the
17 restricted list all the way until the public announcement in
18 May of 2021?

19 A That's not true.

20 Q When did you first become aware it was taken off the
21 restricted list?

22 A I didn't -- I wasn't aware that it had come off the
23 restricted list. I would have assumed it would have been off
24 the restricted list once Mr. Dondero had been severed from
25 Highland.

009677

Seery - Direct

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1 Q I see. Now, Mr. Dondero has relayed a conversation that
2 he had with Mr. Patel and Mr. Linn, suggesting that they were
3 particularly optimistic about MGM based upon what you told
4 them.

5 A I --

6 Q Let me finish. If that occurred, are you suggesting that
7 that is a lie?

8 A Two things. One is I don't think he actually testified to
9 that. I think he said he had a conversation with Mr. Patel.
10 Then he had a different conversation with Mr. Linn, and a
11 subsequent conversation with Mr. Linn. So the way he laid it
12 out were multiple conversations.

13 Q Agreed.

14 A I don't -- I don't know which one you're talking about.

15 Q Mr. Dondero testified that Mr. Patel was particularly
16 optimistic about the investment because of what he had learned
17 from Mr. -- from you about MGM.

18 MR. MORRIS: I dispute that characterization. Why
19 can't he just ask the question?

20 MR. MCENTIRE: That is my question. If that --

21 THE COURT: What is the question? I'm not sure I
22 hear the question.

23 MR. MCENTIRE: I'm getting lost because I'm getting
24 interrupted. I'll try to rephrase it again.

25 MR. MORRIS: It's my first objection.

009678

Seery - Direct

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1 MR. MCENTIRE: And I --

2 THE COURT: Go ahead.

3 MR. MCENTIRE: I'm just going to rephrase, Your
4 Honor.

5 THE COURT: Just rephrase your question.

6 MR. MCENTIRE: Thank you.

7 BY MR. MCENTIRE:

8 Q Mr. Dondero has testified that Farallon advised him in May
9 of 2021 that they were optimistic about MGM based upon what
10 you told them. Assuming that to be the case, do you deny that
11 happened?

12 A I do deny that happened. Because I can't -- I don't know
13 what Farallon told him, but I never told Farallon anything.
14 And a conversation on May 28th, after the May 26th
15 announcement that MGM was going through, might make people
16 optimistic that it could go through, but there was a very
17 difficult FTC process that MGM would have to go through.

18 Q And I'm referring to that. If Farallon stated that they
19 were optimistic about MGM based upon what you had told them,
20 --

21 A That would not be true.

22 Q -- that would be false?

23 A That would not be true.

24 Q And is Mr. Dondero says that's what Farallon told them,
25 that would also be false?

009679

Seery - Direct

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1 A That's correct.

2 Q So we have your statement, we have what may be Farallon's
3 statement, and we have what Mr. Dondero believes may have been
4 Farallon's statement, and you're saying the latter two are
5 just not true?

6 A I didn't have a conversation with Farallon about MGM that
7 -- that I recall --

8 Q Well, you're on the witness stand.

9 A -- virtually at any time.

10 Q You're on the witness stand.

11 A Oh, I'm aware of where I am sitting.

12 Q Yeah. Good. We've got that cleared up. Now, are you
13 suggesting that -- that you may not specifically recall this
14 conversation?

15 A No, I am not saying that at all. After May 26th, when the
16 MGM announcement was made and it was public, I may have had
17 conversations with a number of people about MGM.

18 Q Well, let's make sure the record is clear. Did you call
19 Farallon on May 26th and say, hey, did you know that MGM just
20 sold?

21 A No, I don't recall any such conversation, and I wouldn't
22 have had to, since it was in the paper.

23 Q I'm not talking about what's in the paper. I'm talking
24 about conversations between you and Farallon.

25 A Yeah. I don't recall having a conversation with Farallon

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Seery - Direct

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1 on May 26th.

2 Q How about May 27th?

3 A Not that I recall, no.

4 Q How about May 28th?

5 A Not that I recall off the top of my head.

6 Q And we understand that that's the day that Mr. Dondero
7 actually had his conversation that he's reported, at least,
8 with Farallon. Do you recall that?

9 A That's what he claims, yes.

10 Q You were with a company called River -- you're a lawyer,
11 correct?

12 A I am. I'm in retired status.

13 Q Okay. I wish I was.

14 A It's simply retiring your license and not having to take
15 the CLE.

16 Q Understood. Now, you were with a company called River
17 Birch?

18 A Yes.

19 Q And from River Birch, you went to Guggenheim Securities?

20 A That's correct.

21 Q At Guggenheim Securities, did you go to Farallon and meet
22 with Mr. Patel in their offices in San Francisco?

23 A I believe we did, yes.

24 Q You call it a meet-and-greet?

25 A I do, yes.

009681

Seery - Direct

225

1 Q That was in 2017?

2 A 2017, 2018. I'm not exactly sure when it was.

3 Q And one of the purposes of meet-and-greet is to solicit
4 business or to see if a business opportunity -- see if it
5 exists?

6 A That's not correct, no.

7 Q What is a meet-and-greet for, then?

8 A It's to meet the people at the fund and to greet the
9 people at the fund. Introduce them to other people in your
10 firm.

11 Q Just because it's going to be fun, or does it have a
12 business angle to it?

13 A Oh, it hopefully will be fun, yes, but it's done in order
14 to build a relationship over time. You're not in there
15 soliciting business. If you do that, you won't do very well.

16 Q Okay. Fair enough. So you're there trying to develop a
17 relationship with Farallon?

18 A Guggenheim was, yes.

19 Q And you were part of it?

20 A That's correct.

21 Q And what was your job at Guggenheim?

22 A I was co-head of credit.

23 Q Is that a fairly significant position at Guggenheim?

24 A Not really, no.

25 Q It's not significant at all?

009682

Seery - Direct

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- 1 A No.
- 2 Q All right.
- 3 A Which is why --
- 4 Q Well, you left --
- 5 A Which is why they don't have that business.
- 6 Q Okay. So is that why you left Guggenheim?
- 7 A It -- I did, yeah. It wasn't a good fit for either
- 8 Guggenheim or for me, because it really wasn't something --
- 9 Q When did you --
- 10 A -- that they were set up to do.
- 11 Q -- leave Guggenheim?
- 12 A In 2019.
- 13 Q And then you went back to Farallon to meet with them
- 14 again, did you not?
- 15 A I met with Farallon while I was in San Francisco with my
- 16 wife.
- 17 Q Okay. Did you call ahead to arrange the meeting, or was
- 18 it just a --
- 19 A I --
- 20 Q -- a blind call?
- 21 A I did call ahead, yes.
- 22 Q A cold call, I guess, is the word -- the phrase that they
- 23 use. Okay. So -- and was that a meet-and-greet?
- 24 A That was again, yes.
- 25 Q Again, what were you trying to do? Develop a relationship

009683

1 with Farallon?

2 A I was trying to catch up with them after having met them
3 previously. And that was just Raj Patel. And this one I also
4 met Michael Linn.

5 Q Okay. What kind of business were you in when you met with
6 them the second time?

7 A I wasn't doing anything.

8 Q What were you hoping to do?

9 A I was hoping to get back into the investing side of the
10 business, from running a credit-type lending business at
11 Guggenheim, which is what they tried to do and it didn't work
12 out. And I wanted to get back to what I was doing more at
13 River Birch, but I was looking at other opportunities,
14 whatever came along.

15 Q Well, what were the different options that you were
16 looking at?

17 A I was looking at potentially getting back into investing,
18 joining potentially a restructuring firm, any options like
19 that. I was not looking to become a lawyer again.

20 Q And why would meeting and greeting with Farallon fit in
21 within that scenario, the strategic scenarios that you've just
22 discussed?

23 A They're a giant hedge fund.

24 Q A giant hedge fund?

25 A Yes.

Seery - Direct

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1 Q And so it would be good to have a relationship with a
2 giant hedge fund, wouldn't it?

3 A And to know what their thinking of the markets, where the
4 opportunity set might be, who they are dealing with and
5 interacting with. Those are -- those are valuable things to
6 know over time.

7 Q And --

8 A And you need to maintain those relationships in order to
9 be --

10 Q Sure.

11 A -- part of any business.

12 Q Sure. These meet-and-greets can actually evolve and
13 provide relationship benefits, correct?

14 A I don't -- I'm not sure what you mean by relationship
15 benefits.

16 Q Sloppy words for -- on my part. They can evolve into
17 something that is a meaningful relationship?

18 A They could over time, yes.

19 Q And we know that after you became the CEO of Highland
20 Capital that you received a call from, was it Farallon, to
21 congratulate you on your appointment?

22 A It was an email.

23 Q And that was in the summer of 2020, shortly after your
24 meet-and-greet out in San Francisco?

25 A Your calendar's a bit off, but it was in June of 2020, so

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Seery - Direct

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1 that would have been more than shortly after, but yes.

2 Q Okay. And who contacted you to congratulate you on your
3 appointment?

4 A This was my appointment as an independent director. I had
5 not yet been appointed as CEO or CRO. This was in June of
6 2020, and it was Michael Linn.

7 Q Michael Linn? Was it a telephone call?

8 A I think 30 seconds ago I said it was an email.

9 Q Fair enough. Do you still have that email?

10 A I do, yes.

11 Q Okay. He contacted you again, "he" being Michael Linn, he
12 contacted you again in January of 2021, did he not?

13 A That's correct, yes.

14 Q He wanted to see if he could get involved somehow in the
15 Highland bankruptcy?

16 A Well, he congratulated -- he didn't congratulate -- he
17 wished me a happy new year, and he basically said it looks
18 like you're -- again, he's following the case -- it looks like
19 you're doing good work. Is there any way for us to get
20 involved? We're interested in claims or buying assets.

21 Q Okay. And Stonehill. Now, you know the founder of
22 Stonehill, do you not?

23 A No, I don't know him. I've met him several times.

24 Q Doesn't he come by and stop in and talk with you when
25 you're in Stonehill's offices? And that's happened recently?

009686

Seery - Direct

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1 A Your use of the plural is incorrect, and you know that
2 from the deposition. I was in Stonehill's office one time,
3 and I was in a meeting with Mr. Stern. We ended up having a
4 board meeting from Stonehill's office with the other
5 participants on video, and Mr. Motulsky came in and said
6 hello.

7 Q All right. And who's Mr. Motulsky?

8 A He's the founder of Stonehill.

9 Q I see. And did you know Mr. Motulsky before that?

10 A I'd interacted with Mr. Motulsky over the years at --
11 mostly at industry-type functions.

12 Q Okay. Now, Stonehill is also a hedge fund?

13 A Yes.

14 Q Are they different than Farallon in that regard, or
15 similar?

16 A I don't know as much about what their business is. They
17 certainly do a direct lending component, so I know that they
18 -- they will do some direct lending, which I don't think is
19 something Farallon really does. Farallon is much bigger, as I
20 understand it, but I don't really know the size of Stonehill.

21 Q Okay.

22 A I know they're not a \$50 billion fund like Farallon.

23 Q And do you know Mr. Stern at Farallon?

24 A I now know him, yes, because he was -- he's really the
25 representative on the -- no, he's not the representative on

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Seery - Direct

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1 the board, but he is the one who manages the Stonehill and
2 Jessup positions for Stonehill.

3 Q Well, we know that after you were CEO of Highland, you
4 also got a text message, correct, a text message from someone
5 at Stonehill, correct?

6 A Mr. Stern sent me a text message reintroducing himself --
7 I don't know if it was re- or just introducing -- and sent me
8 his email and asked me to contact him about the case. This
9 was at the end of February/beginning of March 2021, after the
10 confirmation order.

11 Q Okay. After the -- after the confirmation order?

12 A Yes.

13 Q I believe the confirmation order -- I may be wrong -- I
14 thought it was like the 21st, 22nd, somewhere in there. Does
15 that sound right to you?

16 A Yes.

17 Q Okay. So, shortly after confirmation, then, Farallon
18 calls you to congratulate you and wants to see how they can
19 get involved?

20 A No. There was no congratulations there. Shortly after
21 the confirmation order, which I believe was at least a week to
22 ten days after confirmation, I got the communication from Mr.
23 Stern to try to connect about the case.

24 Q All right.

25 A He's at Stonehill, not Farallon.

009688

Seery - Direct

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1 Q Correct. Now, --

2 A You said Farallon.

3 Q I misspoke, then. Thank you for correcting me. Let's
4 talk about -- you live in New York?

5 A I do.

6 Q You're involved with a charity called Team Rubicon?

7 A Yes.

8 Q And Team Rubicon is a -- is that a veterans-type charity?

9 A Yeah. It's a veteran-led organization, and what it does
10 is connects veterans to disasters. And mostly in the U.S.,
11 but also all over. So if there's a flood, if there's a
12 hurricane, if there's an earthquake, veterans who have been
13 trained in -- by the military in ready response and really
14 being able to handle themselves when things are bad are
15 deployed to help the communities that are hit. So I think
16 that Team Rubicon likes to think, you know, on your worst day
17 they're your best friend.

18 Q So you're -- are you on the board?

19 A No, I'm not.

20 Q You're on the Host Committee?

21 A I was on the Host Committee last year, and I'll be on the
22 Host Committee this year.

23 Q Okay. And you have charity events?

24 A We have a charity event, yes.

25 Q Okay. And the purpose of the charity event is to raise a

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Seery - Direct

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1 bunch of money?

2 A That's correct.

3 Q Okay. Have you been successful in the past?

4 A I do my best. Team Rubicon is a big organization. It's
5 done very well raising money. It doesn't have an endowment.
6 The founder's theory was that if people give us money, we're
7 supposed to spend it on helping other people. And so each
8 year it has to raise more money.

9 Q And Stonehill has been -- has contributed to your charity?

10 A I believe Stonehill, one or two years, and I should know
11 this, and I didn't look it up after our deposition, gave
12 \$10,000.

13 Q Okay. Maybe once, maybe twice?

14 A Maybe twice.

15 Q Okay.

16 A I hope more.

17 Q Okay. And they also attend your -- your actual charity
18 events, do they not?

19 A No.

20 Q All right. They just give money?

21 A That's right. And the Mike Stern who's on the board of
22 Team Rubicon is not the Mike Stern who is at Stonehill. It's
23 an older gentleman who's in Texas who just happens to give a
24 lot of money to --

25 Q All right.

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Seery - Direct

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1 A -- Team Rubicon.

2 Q You also represented Blockbuster. Take that back. Were
3 you the lawyer or the attorney representing the Creditors
4 Committee, the UCC, in the *Blockbuster* bankruptcy?

5 A No, I was not.

6 Q Tell me what your capacity was.

7 A I represented a group of bondholders, secured bondholders.
8 So I represented the group.

9 Q And was Stonehill a member of that group?

10 A Not that I recall, but your pleadings seem to indicate
11 that they were. So if they were, they were a small
12 participant. The largest participant was Carl Icahn, who
13 owned about 30 percent of it. Then the others who were big
14 were DK, Davidson Kempner, Monarch, Owl Creek. Those were the
15 big players.

16 Q Well, --

17 A When Carl Icahn is in your group, you remember that.

18 Q Yeah, well, Carl Icahn is not here. We're talking about
19 Stonehill right now.

20 A And I said I don't remember them actually being a part of
21 it. If they were, --

22 Q Okay. Well, let me -- let me give you what I'm going to
23 mark as Exhibit 80. That's your name at the top, right?

24 (Hunter Mountain Investment Trust's Exhibit 80 is marked
25 for identification.)

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Seery - Direct

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1 A That's correct, yes.

2 Q You were at the time with Sidley & Austin?

3 A That's correct, yes.

4 Q This is *In re Blockbuster*.

5 MR. MCENTIRE: Scroll down, please.

6 BY MR. MCENTIRE:

7 Q And steering group of senior -- involves -- well, let's
8 count them. Let's see. One, two, three, four, five. Five
9 entities comprising the backstop lenders. Is that correct?

10 A I think that's the steering group. So, in order to
11 represent the group, you need to try to assemble a large-
12 enough group that it's material to the company. And then the
13 company, if you're -- particularly if you're over 50 percent,
14 will pay the fees of the group. And you don't represent any
15 individual member of the group. I've never represented Carl
16 Icahn. I represent the group. And if folks want to stay in
17 the group, they can stay. If they want to trade out of the
18 group, they do. And the company will generally continue to
19 pay the fees, and you represent the group so long as you have
20 a controlling interest in the -- whatever the issue is.

21 Q Well, that's interesting, because now what you're telling
22 me is that this group right here, this is kind of like the
23 executive committee of the group.

24 A No, it's called the steering group, and it doesn't
25 necessarily --

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Seery - Direct

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1 Q That's fine.

2 A Well, it's not an executive committee. It doesn't
3 necessarily include just the largest. Some large holders
4 won't be on it. The largest holders here by a long shot were
5 Icahn, who --

6 Q I'm not talking about --

7 A -- unloaded, as I say, over 30 percent. Monarch, Owl
8 Creek, and I just don't recall Stonehill being a part of it.

9 Q I'm not really interested in Carl Icahn. I just want to
10 establish this is a steering group in which you were the lead
11 counsel and Blockbuster was on it. Is that correct?

12 A Yes.

13 Q Excuse me. Not Blockbuster.

14 A I'm sorry.

15 Q Stonehill.

16 A No, it's the Blockbuster case in 2010, and Stonehill was
17 apparently on it, but I just don't have a recollection of
18 their involvement.

19 Q All right. So when Mr. -- who sent you the text message
20 in February of 2021 from Stonehill?

21 A Michael Stern.

22 Q And had you actually met him before?

23 A I think I had, but we didn't know each --

24 Q All right.

25 A You know, we certainly didn't know each other, we'd never

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Seery - Direct

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1 worked on anything together, but I --

2 Q Do you have all your text messages from that period of
3 time, that first quarter of 2021?

4 A I believe I do, yes.

5 Q They're saved?

6 A Yes.

7 Q Okay. When did the automatic delete button on your cell
8 phone start?

9 MR. STANCIL: Your Honor, objection. We've covered
10 this this morning. I believe this is a motion coming down the
11 pike, and I thought we had -- thought we had had tabled this
12 preservation issue.

13 MR. MCENTIRE: This has a direct bearing on his
14 communications with Farallon and Stonehill in this period of
15 time, Your Honor. We have one text message that he's
16 identified, and I have a right to examine whether there are
17 others. Or if not, why not.

18 MR. STANCIL: Your Honor, he's --

19 MR. MCENTIRE: That's a legitimate -- I'm not
20 finished. That's a legitimate area of inquiry in this
21 examination.

22 MR. STANCIL: He's testified he has them all. Your
23 Honor did not order document discovery. I think that's it for
24 purposes of today's hearing, Your Honor.

25 THE COURT: Okay. I sustain the objection.

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Seery - Direct

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1 BY MR. MCENTIRE:

2 Q After this text message that you received from Stonehill
3 in February 2021, did you have any follow-up?

4 A Well, his text message, I don't recall what it said other
5 than I was -- I do recall that he gave me his email address,
6 because I didn't have it. And we just didn't know each other
7 well enough. But we definitely had follow -up. He wanted to
8 talk to me, and at some point we talked.

9 Q And when did you talk?

10 A I'm sorry?

11 Q When did you talk?

12 A When? I -- it was at the, initially, end of February,
13 beginning of March. So it would have been somewhere in that
14 -- in that time period.

15 Q End of February, beginning of March? And we also know
16 that you next talked to Farallon, according to your testimony,
17 and they advised you they had already purchased all their
18 claims as of March 15, correct?

19 A On March 15th, they sent me an email that said they had
20 purchased an interest in claims, and --

21 Q So -- go ahead.

22 A I'm not finished. And then at some point after that, we
23 arranged a quick discussion, because that was a curious --

24 Q I want to assure you I will always let you finish.

25 A Thank you very much.

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1 Q Unlike others. So, with that said, Mr. Seery, can you
2 identify -- let me back up. Was there a data room set up at
3 Highland Capital for claims investors to come in and look at
4 data?

5 A No, there was not.

6 Q Are you aware, sitting here today, that Farallon did any
7 due diligence in connection with its investment in the claims
8 it purchased that are at issue in this proceeding?

9 A I have indication that they did some, yes. I don't know
10 how much they did.

11 Q What is the indication?

12 A In the email in June of 2020, Mr. Linn said that he and
13 his associate were following the case, thought it was --
14 that's the one that congratulated me on being an independent
15 director, and that they were paying attention to the case.
16 And it -- I don't recall the exact other items in there, but
17 it was clear that they were following the Highland matter.
18 And then in the email in January 2021, he also indicated that
19 they'd been following the case further, and said, Looks like
20 you have things well in hand, or something to that effect. So
21 --

22 Q Do you have that email, too? Have you saved that email?

23 A They're all saved, yeah.

24 Q Okay. So let's talk about that. But you had no data room
25 that would allow them to come in and actually investigate the

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1 underlying assets. Is that correct?

2 A Not in respect of anybody trying to buy claims. We did
3 have a data room with respect to financing.

4 Q Please listen to my question. I'll get to it. Data room
5 for claims investors. There was no data room set up on or
6 before March 15 to allow Farallon to come in and investigate
7 its investment in this claim?

8 A That's correct.

9 Q There was no data room set up prior to March 15 to allow
10 Stonehill to come in and investigate its investment in the
11 claims it purchased. Is that correct?

12 A That's correct.

13 Q Can you identify any due diligence, sitting here today --
14 let me back up. You heard Mr. Dondero's testimony about
15 portfolio companies, correct?

16 A Yes.

17 Q Portfolio companies are companies in which Highland
18 Capital has an interest that actually have separate and
19 distinct management. Is that correct?

20 A Generally. And it -- I disagree with some of his
21 testimony, but generally that's correct, yes.

22 Q Well, okay. Let's just take on the part that you agree
23 with. With regard to those portfolio companies, was there
24 anything that was disclosed in the Highland publicly-available
25 financials that would allowed a detailed analysis of

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1 Highland's investments in each of those portfolio companies?

2 A I don't know. Certainly, in the four or five sets of
3 projections that were filed, there were financial projections.
4 I'm not sure exactly what was included in each one or in the
5 disclosure statement.

6 Q Fair enough. Well, I'll represent to you I don't think
7 there's detailed information on each individual portfolio
8 company.

9 MR. MORRIS: Your Honor, he's not here to testify. I
10 move to strike.

11 MR. MCENTIRE: Okay.

12 THE COURT: Sustained.

13 BY MR. MCENTIRE:

14 Q In that regard, Mr. Seery, can you identify what Farallon
15 did to investigate the underlying asset value of any of these
16 portfolio companies?

17 A I don't have any knowledge as to what Farallon did before
18 it bought claims.

19 Q Can you identify what due diligence Stonehill did to
20 investigate the underlying asset value in any of these
21 portfolio companies?

22 A I don't -- I mean, in connection with claims purchasing, I
23 have no idea what Stonehill did.

24 Q Now, I understand that you solicited -- perhaps I don't
25 recall correctly. Did you solicit both Farallon and Stonehill

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1 to participate in a bid to provide exit financing?

2 A I don't think that's fair. I solicited Farallon because I
3 knew they already owned claims. Stonehill reached out to me,
4 and that was one of the things they were interested in doing,
5 if there was financing needs.

6 Q Okay.

7 A And at the time they reached out, which was right after
8 confirmation -- right after confirmation and the confirmation
9 order, we didn't know what our needs would be. We didn't
10 really, at the early stage, think we needed exit financing.
11 When we looked at some of the difficulty we were going to have
12 -- for example, collecting notes and realizing on assets -- we
13 realized that we were going to need some exit financing in
14 order to have enough money to support the enterprise to
15 monetize the assets.

16 Q And I think you used the -- I think the phrase you used,
17 you are the straw man or a straw man bid? Is that what you
18 called it the other day?

19 A We did. You set up a very typical competitive process to
20 do exit financing.

21 Q And what was the --

22 A And what -- well, I --

23 Q -- suggest --

24 A I was going to get to your straw man. And one of the
25 things you do is you assess what the market's going to look

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1 like, what you think the market looks like, what you think a
2 financing would be good for the enterprise, the flexibility
3 you need, how you'd structure it. And then you put that out
4 to prospective lenders and say, Here's our straw man. This is
5 what we'd like you to consider in terms of financing. And
6 then they do their work and come back. And they can either
7 say, that looks great, or we have a totally different idea of
8 what the financing might be, or some other combination of
9 those things.

10 Q Mr. Seery, thank you for that answer, but I need to ask
11 you to do me a favor. I'm on the clock, and so I'd just like
12 to get my questions out, if you'd try to respond. Okay?

13 A Uh-huh.

14 Q Because your answers, as long as they may be, are
15 impacting me a little bit.

16 So let me ask this question. In the straw man proposal
17 that you put out for bid, what was the suggested interest
18 rate?

19 A You know, you asked me that the other day, and I think I
20 was slightly off. So it -- and I -- but I did tell you that
21 it depended. There was -- I don't recall what the rate was,
22 but it starts -- if everybody wants to put out money -- and I
23 apologize for the length of the answer -- they look and they
24 say, well, what if I get paid back in six months? Nobody
25 wants to do that. So, duration makes a difference. So

009700

1 there's an interest rate. There's upfront fees. There's
2 often exit fees. And sometimes there's other amounts. So,
3 our -- my recollection is that our straw man was somewhere in
4 the low teens on the high end, and then closer to high single-
5 digits on the low end. Something in that range.

6 Q And Farallon indicated to you they were not interested,
7 correct?

8 A No, not exactly. What Farallon said was they didn't --
9 they signed an NDA because we invited them in. We invited in
10 six folks. Five signed NDAs. Two of the -- I invited in
11 Farallon. I invited in Stonehill. Well, Stonehill called me.
12 I invited in Contrarian because they had bought claims. And
13 then two lenders that I knew. And Farallon did the work and
14 came back and said, this isn't really what we do. And the
15 other guys, you're telling me, which I was, that other people
16 are more competitive. And so it's not really what we do, we
17 don't think the returns are good enough, but if you need us,
18 because now they're already invested in the claims, call us.

19 Q Okay.

20 MR. MCENTIRE: And again, I'll object as
21 nonresponsive. Your Honor, that was a very long answer
22 talking about a lot of other entities. My only question was
23 what the interest rate was.

24 MR. MORRIS: Your Honor, we oppose the motion to
25 strike. I think it's --

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1 MR. MCENTIRE: No, I didn't strike it. I said -- my
2 objection was nonresponsive. I will now follow it up with a
3 motion to strike his answer.

4 THE COURT: Overruled. Okay.

5 BY MR. MCENTIRE:

6 Q Mr. Seery, you just told us that the interest rate was in
7 the high single digits to in the 12 and 13 percent range.

8 A No, I was giving you the all-in return for the lender.
9 That's a very different --

10 Q All-in return?

11 A -- thing for the -- than an interest rate.

12 Q That's even better.

13 A And it depended on the time.

14 Q Fair enough.

15 Q So if -- the shorter the duration, the higher the
16 effective return, because he's not getting the return for as
17 long a period of time. If I have \$100 million and I get 10
18 percent, I get just \$10 million. But if I have that out for
19 \$3 million, I've earned \$30 million. So maybe that gets
20 squeezed in the longer it's out.

21 Q And Farallon said that the interest rate or the return
22 rate was not what they were looking for?

23 A They indicated two things. I believe I've said this
24 several times. One is they said, this isn't really what we
25 do, a \$50-ish million dollar loan to do an exit. But we're in

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1 the case. If you need us, call us. Included in that was, it
2 doesn't look attractive enough to us because you're telling me
3 other guys are more competitive.

4 Q Okay. And do you know what kind of rate of return they
5 were going to get on the investment of the -- on the claims at
6 a 71 percent projected return rate?

7 A If we only hit the plan, Farallon's two purchases, based
8 on the numbers you get -- you gave, over a two-year period,
9 would be 38.9 percent.

10 Q Okay, but we're going to talk about that in a second.

11 Okay. How much -- how much did Farallon actually invest?

12 A I'd have to look back at your numbers. They're in your
13 pleading. I don't know what they actually paid. I just have
14 it from your pleading.

15 Q Okay. And do you have paperwork that -- can you
16 (inaudible) calculation here?

17 A I have a calculator that, when I looked at your numbers, I
18 ran that, and I --

19 Q I see. All right.

20 A I'm able to remember certain things.

21 Q So, so if it's projected that the internal rate of return
22 is only six percent, do you disagree with that?

23 A A hundred percent disagree. There's -- that's virtually
24 impossible.

25 Q Okay.

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Seery - Direct

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1 A And that's, by the way, for hitting the plan.

2 Q I'm sorry?

3 A That's for hitting the 70 -- the 71-and-change percent.

4 Q I want to ask you a question about that. The 71-percent-
5 and-change --

6 A Uh-huh.

7 Q -- that came out of the plan for Class 8, --

8 A Yes.

9 Q -- that was for Class 8, correct?

10 A Correct.

11 Q There was zero expected return to Class 9, correct?

12 A That's correct. They would only get upside, and I think
13 it says in the projections, based upon our view at the time,
14 litigation that could ensue, and that was part of the plan.

15 Q And as I understand it, that 71-and-some-change --

16 A Uh-huh.

17 Q -- projected return rate never changed from the date of
18 confirmation all the way up to the effective date. Am I
19 correct?

20 A The -- we didn't change the projections that we'd filed
21 with the plan because the plan was confirmed. We didn't need
22 to change the projections that were filed with the plan.

23 Q The NDAs, as you understand it, can you tell me
24 specifically when the NDAs were signed?

25 A I know it's the first week of April to the second week of

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Seery - Direct

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1 April. Blue Torch may have signed -- who actually ended up
2 doing the financing -- they may have signed it a week or so
3 before. They'd been around offering financing a number of
4 times in the past.

5 Q Fair enough. But we know that you understood as of March
6 15th that Farallon had already made their investments? I
7 mean, claims?

8 A That's what they told me in that email, yes.

9 Q Okay. When did Stonehill sign the NDA?

10 A In and around the same time.

11 Q But you don't know when Stonehill actually purchased their
12 claims?

13 A I don't know exactly when. I know generally that by the
14 end of April, early May, they were -- they were the holder of
15 the Redeemer claim. And --

16 (Interruption.)

17 A -- I can't remember whether it was from them or whether it
18 was from --

19 Q Did you ever communicate with Stonehill during the time
20 that they were doing their due diligence on the exit
21 financing?

22 A Yes.

23 Q Okay. Did they come to your offices?

24 A I don't know if we were back yet. I think we were back,
25 but I don't recall them coming to our offices. I think it was

009705

1 all virtual. It's early '21, so there would have been
2 vaccines. It would have been very -- very -- I don't recall
3 them coming to the offices at that time.

4 Q But just to be clear, you don't know, you can't give the
5 Court a date when Stonehill actually completed their
6 investments in either Redeemer or HarbourVest?

7 A No, I don't. I don't know. Did -- just --

8 Q That was my question.

9 A When you say Redeemer or HarbourVest, they never bought
10 HarbourVest.

11 Q It was just Redeemer?

12 A Correct.

13 Q All right. You understand that Muck is an entity, a
14 special-purpose entity created by Farallon?

15 A That's my understanding, yes.

16 Q And you understand Jessup is a special-purpose entity
17 created by Stonehill?

18 A That's my understanding, yes.

19 Q Muck and Jessup are both on the Oversight Committee?

20 A They are. They -- those entities are the --

21 Q Is it the Oversight Committee or the Oversight Board?

22 A Same thing.

23 Q Fair enough.

24 A I'll consider them the same.

25 Q And there's a third member, too, correct?

Seery - Direct

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1 A That's correct.

2 Q Okay.

3 A Independent member.

4 Q Okay. So you have a three-person board; is that right?

5 A That's correct.

6 Q And one of their jobs is to make decisions concerning your
7 compensation?

8 A The structure of the Claimant Trust Agreement provides
9 that I'm to negotiate with the -- either the Committee or the
10 Oversight Board. And the compensation in the Claimant Trust
11 Agreement is a base salary of \$150,000, which is -- a month,
12 which is the same as the one in the case, plus severance, plus
13 a success fee. And it's very specific that that will be
14 negotiated by the -- either the Committee or then the
15 Oversight Board.

16 Q And Michael Linn, who Mr. Dondero has referred to, he's
17 actually on the Oversight Board, is he not?

18 A He's the Muck representative on the Oversight Board.

19 Q All right.

20 A Yes.

21 Q If I understand it correctly, you are currently receiving,
22 as the Trustee, \$150,000 a month. Is that correct?

23 A That's incorrect.

24 Q What are you receiving?

25 A I receive \$150,000 a month as the Trustee and the CEO of

009707

Seery - Direct

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1 Highland Capital.

2 Q Well, --

3 A So I have --

4 Q -- fair enough.

5 A I have both roles. The Trustee, for example, doesn't
6 manage the team, they actually work for Highland Capital, and
7 I'm the CEO of Highland Capital.

8 Q There was some suggestion that the \$150,000 was something
9 that the Court had passed upon prior to the effective date or
10 part of the plan. This is a separate negotiated item that you
11 -- that you allegedly negotiated that was awarded to you post-
12 effective date, correct?

13 A That's false.

14 Q Okay. So the \$150,000 had a discount that was supposed to
15 drop down to \$75,000 after a period of time. That never
16 happened, did it?

17 A The -- you seem to be mixing concepts. But the \$150,000 a
18 month was set by the plan and the -- and the Claimant Trust
19 Agreement as the "base salary." That wasn't going to move.
20 When we -- it never was supposed to move.

21 When I began negotiating with the Oversight Board for the
22 success fee, they pushed back and said, we would like that to
23 step down. So in our -- I did not say, oh, that's a great
24 idea. We ended up negotiating, and they included a provision
25 that we would renegotiate depending on the level of work.

009708

Seery - Direct

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1 That's one of the provisions.

2 Q Okay. But renegotiate down to \$75,000 after a period of
3 time, but that never happened?

4 A Initially, I believe it was supposed to step down to
5 \$75,000 automatic, subject to renegotiation that it go back
6 up, not a structure that I particularly liked. And since
7 then, we've negotiated on that point.

8 Q So you currently are making \$150,000 a month?

9 A That's correct.

10 Q How often do you come to Dallas?

11 A Usually I'm here at least once a month. Usually it's
12 between two and four days.

13 Q Okay. And you have a staff here in Dallas at Highland
14 Capital, correct?

15 A Yes.

16 Q How many people?

17 A Eleven.

18 Q Eleven people?

19 A Uh-huh.

20 Q Working full-time?

21 A Yes.

22 Q And you're still making \$1.8 million a year?

23 A Yes.

24 Q You also have a bonus structure, correct?

25 A That's correct.

009709

Seery - Direct

253

1 Q And that's performance-based?

2 A That's correct.

3 MR. MCENTIRE: Can you pull up the agreement please?

4 Okay.

5 (Pause.)

6 BY MR. MCENTIRE:

7 Q All right. Do you see --

8 MR. MCENTIRE: We're having technical difficulty
9 here.

10 BY MR. MCENTIRE:

11 Q All right. Can you identify this document?

12 MR. MCENTIRE: What exhibit number is this?

13 MR. MILLER: 28.

14 BY MR. MCENTIRE:

15 Q Exhibit 28.

16 MR. MCENTIRE: I believe this is already in evidence.

17 THE COURT: Hunter Mountain Exhibit 28?

18 MR. MCENTIRE: Yes, Your Honor.

19 THE COURT: Okay.

20 BY MR. MCENTIRE:

21 Q This is the memorandum of agreement. Do you see that?

22 A Yes.

23 Q On the third line, it says -- and your name is identified
24 here. You're the Claimant Trustee, correct?

25 A Claimant Trustee/CEO.

009710

1 Q Engaged in robust, arm's length, and good-faith
2 negotiations regarding the incentive compensation program.

3 As part of this robust, arm's length, and good-faith
4 negotiation, did you personally conduct any independent search
5 in the marketplace?

6 A I did -- what do you mean by search in the marketplace?

7 Q Well, did you try to do a market study? I asked that
8 question in your deposition.

9 A I didn't know if you were asking a different question.

10 Q Same question.

11 A You mean market study on compensation?

12 Q Yes.

13 A No, I did not.

14 Q Are you aware of whether or not any member of the
15 Oversight Board or Oversight Committee did a market study?

16 A On compensation?

17 Q On compensation.

18 A I'm not aware that they did one, no.

19 Q So this robust, arm's length, and good-faith negotiation,
20 as far as you know, is divorced from any market study database
21 or -- or methods. Is that correct?

22 A I don't believe that's correct, no.

23 Q I see. So did -- was any third-party consultant hired?

24 A Not by me or Highland or the Trust, no.

25 Q All right.

Seery - Direct

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1 MR. MCENTIRE: Can you scroll down a little bit,
2 please?

3 BY MR. MCENTIRE:

4 Q You signed this agreement, correct?

5 A Yes.

6 Q And we have Michael Linn signing on behalf of Muck, who
7 also is with Farallon, correct?

8 A That's correct.

9 MR. MCENTIRE: Scroll down.

10 BY MR. MCENTIRE:

11 Q And by the way, this is a heavily-redacted document. The
12 redactions deal with what?

13 A The redactions deal with the portion that would go to the
14 team as opposed to going to me.

15 Q Are we talking about the 11-member team?

16 A Correct.

17 MR. MCENTIRE: Can you scroll down? Stop. Go back.

18 BY MR. MCENTIRE:

19 Q So we have the assumed allowed claim amounts under Section
20 D. Do you see that?

21 A Yes.

22 Q Class 9, \$98 million and some change. Class 8, \$295
23 million and some change. Then we go into the incentive
24 payment tiers. Do you see that?

25 A Yes.

009712

Seery - Direct

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1 Q What's the purpose of the tiers?

2 A The purpose of the tiers was to set additional
3 compensation so that, the more recovery, the higher the
4 compensation. So, below Tier 1, there was really effectively
5 no bonus, is my recollection. And then in each tier there
6 would be a percentage.

7 So the first tier is \$10 million. There would be a
8 percentage of that \$10 million that could be allocated for
9 bonus. Then in the next tier it would be \$56 million. A
10 portion of that would be allocated for bonus. And it's
11 weighted more heavily to the higher-recovery tiers, meaning it
12 incentivizes both me and the team to try to reach deeper into
13 Class 8 and Class 9 and get higher recoveries.

14 Q Okay. So the idea is, the more difficult it is to get the
15 recoveries, the higher percentage you should get, because if
16 you're successful then you should be rewarded accordingly? Is
17 that kind of how it works?

18 A I'm not sure if difficult is the term, but it's a
19 combination of both expertise, difficulty, and time.

20 MR. MCENTIRE: All right. Can you scroll down,
21 please? Next page.

22 BY MR. MCENTIRE:

23 Q And here are your actual tier participations. They go --
24 you said basically nothing Tier 1, up through 6 percent. So
25 Tier 1 is the 71 percent, right?

009713

Seery - Direct

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1 A It's .72 percent, and it's of the -- that's the first
2 piece. You have to get to Tier 1. So if we had not -- I
3 believe it's structured is if we don't get to Tier 1, for
4 example, we don't hit the plan, right around the plan number
5 of 71-and-change cents, then there wouldn't -- there wouldn't
6 be upside.

7 So it was very much structured in a way that you had to
8 perform. And then the better the performance, the bigger the
9 percentages of the tier.

10 Q So, in theory, Mr. Seery, by the time you get down to Tier
11 4 and Tier 5, it's a little bit less certain that you're ever
12 going to get there. Is that right?

13 A Well, out of the gate, going deeper was uncertain. It's a
14 question of being able to execute well on the assets and being
15 able to control the costs and being able to make
16 distributions. It wasn't based on what we just got for the
17 assets. It's actually based on actual distributions --

18 Q I understand that.

19 A -- to Class 8 and 9 claimants.

20 Q I understand that. And the idea is, is that it take a lot
21 more effort -- the theory was it might take a lot more effort
22 to get all the way to the bottom of Tier 5 to pay all the
23 Class 9 claims, right?

24 A And maybe a little luck.

25 Q Yeah. And Class 10 is not even factored into this, is it?

009714

Seery - Direct

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1 A No, it is not.

2 Q And so you didn't consider Class 10. You stopped at Tier
3 5?

4 A That's correct.

5 Q So your entitlement to a 6 percent return, or a 6 percent
6 bonus on the recoveries, you say it's there to incentivize
7 you. You didn't expect that to actually happen, did you, when
8 you signed this? Is that your testimony?

9 MR. STANCIL: I object to the form of the question.
10 It mischaracterizes the agreement.

11 BY MR. MCENTIRE:

12 Q You didn't expect it to happen, did you, sir?

13 THE WITNESS: Well, the six --

14 THE COURT: Wait. I'm sorry. Could you rephrase the
15 question?

16 MR. MCENTIRE: Sure.

17 BY MR. MCENTIRE:

18 Q Are you telling the judge that you really didn't expect
19 that to happen and that's why you were entitled to a higher
20 percentage?

21 A No. We didn't expect to reach Class 9 and go deep into
22 Class 9, but we certainly held out the possibility that we
23 could. And it's not six percent. It's six percent of the
24 increment. These are cumulative. So you get .72 of Tier 1.
25 You get 1.17 of Tier 2. And you can add those, and you earn

009715

Seery - Direct

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1 them when you've actually made the distribution, but you don't
2 get paid until you get all your distribution or we're
3 relatively done or there's a renegotiation. Because the
4 Committee wanted to make sure that I didn't say, hey, I hit
5 Tier 3, time to go, I got a better job.

6 Q So, Mr. Seery, if Farallon told Mr. Dondero that they
7 wouldn't sell basically at any price because you said it was
8 too valuable, and they rejected a 40 or 50 percent premium, if
9 they said that, is that -- is that a lie?

10 A That I -- rephrase that, please. I don't -- didn't quite
11 understand your question.

12 Q Yeah. You've heard the testimony that Farallon, Michael
13 Linn, told Mr. Dondero that they were not going to sell their
14 claim at any amount because you had told them it was too
15 valuable. Is that a lie?

16 A I think that's -- yeah, I don't think that's true.

17 Q Okay. And obviously, if they're not going to be willing
18 to sell at any amount, they must be pretty certain they're
19 going to hit Tier 5. Would that just be a lie?

20 A That -- that conversation was before this negotiation.
21 That -- there's no -- they could not have had any expectation,
22 either when they had that conversation in May or when we had
23 this discussion that I was going to hit Tier 5 and I hadn't
24 hit Tier 5. And the idea that they wouldn't sell at any price
25 is complete utter nonsense, because they're capped on what

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Seery - Direct

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1 they can get.

2 Q So if -- sure. Okay. So, but if Farallon told --

3 A But that's what you said.

4 Q If Farallon told Mr. Dondero that they wouldn't even sell
5 at 130 percent of the purchase price because you told them it
6 would be too valuable, is that a lie?

7 A I never told them it would be too valuable. I don't -- I
8 don't know any of the other parts that you're saying, the 130
9 percent of an unknown number, some guess number that Mr.
10 Dondero had. I never told them it would be too valuable.
11 That would be their own assessment of where we were at the end
12 of May 2021.

13 Q If they said that you told them not to sell, that it was
14 too valuable, is that a lie?

15 A That's untrue, yes.

16 Q If they told him -- if they told him that he told you --
17 that you told them it was too valuable because of MGM, is that
18 a lie?

19 A Yes.

20 Q How many shares of stock did Highland Capital own?

21 MR. MCENTIRE: Well, one second. What is my time?
22 How much time do I have?

23 THE CLERK: Right now you're at --

24 MR. MCENTIRE: So I'm almost two and a half hours in?

25 THE CLERK: Just about. A little under.

009717

Seery - Direct

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1 BY MR. MCENTIRE:

2 Q I'm going to have to speed up here, Mr. Seery.

3 THE COURT: A little under two and a half, you said.

4 BY MR. MCENTIRE:

5 Q Mr. Seery, I want to make sure. Highland Capital owns
6 interests in the CLOs. What is the CLOs' stake in the MGM
7 stock, or what was it?

8 A Highland Capital does not own any interest in any of the
9 CLOs it manages. It has a fee stream, and it can have certain
10 deferred fees that it can get, but it didn't own any interest
11 in any of the CLOs that it managed.

12 Q Fair enough. How about the portfolio companies?

13 A Did Highland Capital own interests in the portfolio
14 companies?

15 Q Yes.

16 A Some of the ones Mr. Dondero listed, but they weren't
17 portfolio companies. So he said OmniMax, but we didn't have
18 any management of OmniMax. We just had debt that converted to
19 equity, but we didn't control the -- the thing. That was
20 during the case, the company.

21 Q Did Multistrat have an interest in MGM?

22 A Multistrat owned MGM, yes.

23 Q Okay. And did your company, Highland Capital -- your
24 company -- Highland Capital have an interest in Multistrat?

25 A Highland Capital owns 57 percent of Multistrat, yes.

009718

Seery - Direct

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1 Q And did Highland Capital have an interest in any other
2 portfolio companies that have an interest in -- had a stake in
3 MGM?

4 A RCP. Restoration Capital Partners.

5 Q And do you recall what the value of that was?

6 A It shifted over time. I don't -- I don't know what time
7 you're talking about.

8 Q And isn't it true that 90 percent of all the securities
9 that Highland Capital owned at the time that the sale went
10 public was roughly 90 percent of all of Highland Capital's
11 securities?

12 MR. STANCIL: Objection, Your Honor. I don't know
13 what that question is asking.

14 THE COURT: I don't understand it, either.
15 Could you rephrase?

16 MR. MCENTIRE: I'll try to.

17 BY MR. MCENTIRE:

18 Q At the time that the announcement was made about Amazon
19 buying MGM in May of 2021, what percentage of all the
20 securities did MGM comprise of the securities that were owned
21 by Highland Capital?

22 A Of the securities that were directly owned by Highland
23 Capital, it may have been -- I'm thinking of public or semi-
24 public securities, the 150,000 or 170,000 that we had that
25 were subject to the Frontier lien. Might have been almost all

009719

Seery - Direct

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1 of the securities that we owned. It wasn't -- it was a good
2 position, but it wasn't a huge driver for the directly-owned
3 shares. There was more value in the Multistrat and the RCP.

4 Q What percent of shares of all --

5 MR. STANCIL: Your Honor, I'm sorry, I'm having
6 trouble hearing the end of Mr. Seery's answers. So I know
7 it's not his --

8 THE WITNESS: I'm sorry.

9 THE COURT: Okay. If you could make sure you speak
10 into the mic.

11 THE WITNESS: Yeah. I'm sorry.

12 MR. STANCIL: I'm having trouble with Mr. McEntire
13 talking over the end of Mr. Seery's answers.

14 THE COURT: Ah.

15 MR. STANCIL: I'm having trouble following.

16 THE COURT: Okay.

17 MR. STANCIL: I apologize.

18 THE COURT: Okay. Could you --

19 MR. MCENTIRE: I didn't know I was doing that.

20 THE COURT: Well, --

21 MR. MCENTIRE: I'll try to do better.

22 BY MR. MCENTIRE:

23 Q Mr. Seery, of all the stock that Highland Capital owned in
24 May of 2021, what percentage of that was (inaudible) stock?

25 A Hopefully this is clear. Highland Capital did not own a

009720

Seery - Direct

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1 lot of stock. Highland Capital did have a direct ownership
2 interest in MGM, so that might have been the vast majority of
3 the stock that Highland Capital owned. It did own interest in
4 other entities, like its investment in RCP or its investment
5 in Multistrat. But of the stock that it owned directly, that
6 was probably it, and that's the one that was liened up to
7 Frontier.

8 Q Mr. Seery, did Highland Capital own approximately 170,000
9 shares of MGM stock in May of 2021?

10 A Yes. You -- I'm sorry. You asked me what percentage, and
11 I think I said roughly that amount of stock liened up to
12 Frontier, and that that might have been almost all of the
13 stock we owned.

14 Q Does Highland Capital own a direct interest in HCLOF?

15 A In HC --

16 Q HCLOF?

17 A HCLOF? Yes. Highland Capital owns a small direct
18 interest, and a large indirect interest which we got through
19 the settlement with HarbourVest.

20 Q And the entity in which you acquired the indirect
21 interest, what's the name of that entity?

22 A I don't recall. It's a -- it's a single-shell special-
23 purpose entity that we own all of it and it has no other
24 assets.

25 Q And just to make sure that the record is clear, you deny

009721

Seery - Direct

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1 under oath that HCLOF has any interest -- or had any interest
2 in MGM stock?

3 A HCLOF has never owned MGM stock and still doesn't own MGM
4 stock. It's never owned it.

5 Q Um, --

6 A At least -- at least, as long as I've been in this case.

7 MR. MCENTIRE: One second, Your Honor, please.

8 (Pause.)

9 MR. MCENTIRE: I'm going to have to pass the witness
10 because of time sensitivities, Your Honor, so I'll pass the
11 witness at this time.

12 THE COURT: Okay. Cross?

13 CROSS-EXAMINATION

14 BY MR. MORRIS:

15 Q Mr. Seery?

16 A Yes, sir.

17 Q You just covered a lot of what we would have covered, so I
18 want to be really, really quick here. Okay? We're not
19 covering old ground. Let's just start with the HarbourVest
20 settlement. Do you recall that Mr. Dondero sent the email to
21 you on December 17th?

22 A Yes.

23 Q Okay. When did you reach the agreement with HarbourVest
24 on the settlement?

25 A December 10th.

009722

1 Q Okay.

2 MR. MCENTIRE: Your Honor, I'd like to move into
3 evidence Exhibit 31. Actually, let me lay a foundation first.

4 Can you give the witness --

5 MR. MCENTIRE: Is this a new exhibit?

6 MR. MORRIS: No. It's Exhibit 31.

7 MR. MCENTIRE: Can I see it, Tim, please?

8 MR. MORRIS: It's in your box.

9 MR. MCENTIRE: Give me a minute.

10 MR. MORRIS: Uh-huh.

11 THE COURT: Okay. We're about to focus on Highland
12 Exhibit what?

13 MR. MORRIS: 31.

14 THE COURT: Okay.

15 MR. MORRIS: Do you have it, Your Honor?

16 THE COURT: I do.

17 BY MR. MORRIS:

18 Q Do you have it, Mr. Seery?

19 A I do, yes.

20 MR. MORRIS: Do you have it, sir?

21 MR. MCENTIRE: I do. Thank you.

22 MR. MORRIS: Okay.

23 BY MR. MORRIS:

24 Q Can you just tell the Court what this is?

25 A This is an email chain. It starts from me to the other

1 independent directors, copying counsel, to outline the terms
2 of the HarbourVest settlement that I had just made the offer
3 to HarbourVest to settle on these terms on December 8th. And
4 this was the product of a number of negotiations that had
5 taken place over the prior weeks, and this was the final offer
6 that I was making to them to settle.

7 Q Directing your attention to the bottom of the first page,
8 the first email dated December 8, 2020 at 6:46 p.m., can you
9 just read the first sentence out loud.

10 A I lost -- you lost me.

11 Q That begins, "As discussed yesterday."

12 A Oh. "As discussed yesterday, after consultation with John
13 Morris" -- that would be you -- "regarding litigation risks,
14 this evening I made an offer" -- it says "and," but it should
15 have said "an" -- "offer to HarbourVest to settle their
16 claims. The following are the proposed terms."

17 Q Okay. Just stop right there. And you were -- this is the
18 report that you gave to the independent directors?

19 A The other independent directors.

20 Q Right.

21 A I was also one.

22 Q Right. And did Mr. Dubel respond?

23 A He did, yes.

24 Q And can you just describe briefly what your understanding
25 was of his response?

1 A Dubel responds a couple hours after I sent the original
2 email: "Jim, this basically looks like a \$10 million -- net
3 \$10 million payment to HV." That's HarbourVest. "Is that
4 correct? Does the 72-cent recovery include the \$22-1/2
5 million that we get from the transfer of HCLOF interests?
6 Remind me again, post-effective date, who is managing HCLOF?"

7 So I think my understanding was Mr. Dubel was querying me
8 on some of the terms that I had set forth here, including that
9 the value of the claim in our estimation was going to be about
10 \$9.9 million, meaning they would have a \$45 million senior
11 claim, a \$35 million junior claim, and we thought, based on
12 the values we had then, it was going to pay out about \$9.9
13 million.

14 Q Okay. And was this offer accepted?

15 A Yes, it was.

16 Q When was it accepted?

17 A I think I just said. On -- on December 10th.

18 Q Okay. And did the terms that you described for the other
19 independent directors on December 8th, did they change in any
20 way at all from that reflected in this email until the time we
21 got to the 9019 hearing?

22 A Not at all, no.

23 Q Okay. I see that you mention in here that you -- it says,
24 quote, "The interests have a marked value of \$22-1/2 million,
25 according to Hunter Covitz." Do you see that?

1 A That's correct, yes.

2 Q Who's Hunter Covitz?

3 A Hunter Covitz was a Highland employee. He ran the
4 structured products business. So he was responsible for
5 making sure that the CLO we managed, which was AC7, was
6 compliant and was -- with the indentures. He also was
7 responsible for monitoring the -- what we call the 1.0 CLOs,
8 even though they weren't really CLOs, they were more like
9 closed-in funds. And he also kept track of the Acis -- CLOs
10 that HCLOF had an interest in that were managed by Acis.

11 Q Okay. And do you recall how he conveyed to you the NAV?

12 A Well, I talked to him numerous times, so this wasn't our
13 -- I didn't just call him up at the end and say, what's the
14 NAV? I had had discussions with him while I was negotiating
15 with HarbourVest. And at some point, he or someone -- he told
16 me the amount, and at some point he gave me a NAV statement
17 that actually showed the NAV of HCLOF, which at 11/30 was
18 roughly \$45 million.

19 Q Okay. Can you turn to Exhibit 31-A, the next document in
20 the binder?

21 A Mine's completely blacked out.

22 THE COURT: I'm sorry, what number?

23 MR. MORRIS: 31-A.

24 THE COURT: Oh.

25 MR. MORRIS: And the first two pages are redacted

1 just because they're not relevant and they're business
2 information.

3 BY MR. MORRIS:

4 Q But can you turn to the last page, sir?

5 A Yes.

6 Q Can you tell the judge what this is?

7 A So this is a net asset value statement from HCLOF. That's
8 Highland CLO Funding, Limited. That's the Guernsey entity
9 that -- that held these interests. And this is a net asset
10 amount, and it shows what the net -- what the net asset value
11 is as of this time on a carryforward basis of \$45.191 million.

12 Q Okay. And where did you get this document?

13 A I believe I got it from Covitz. It's generated by an
14 entity called Elysium, which is the fund administrator for
15 HCLOF, and I believe they're out of Guernsey.

16 Q And did you rely on this document in setting the proposal
17 to HarbourVest?

18 A Well, both the conversations with Covitz and the document.
19 And frankly, HarbourVest got the same documents because they
20 were -- they held a membership interest in HCLOF. So he --
21 Michael Pugatch knew what the NAV was.

22 Q And would Mr. Dondero or entities controlled by him who
23 also have interests in HCLOF, is it your understanding that
24 they would have also had this document available?

25 A All members would --

Seery - Cross

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1 MR. MCENTIRE: Excuse me. Excuse me. I object to
2 that question, the question being "and the entities controlled
3 by Mr. Dondero." There's no foundation for this witness to
4 answer a question like that.

5 BY MR. MORRIS:

6 Q Who else owned --

7 THE COURT: Sustained.

8 BY MR. MORRIS:

9 Q -- an interest in HCLOF?

10 THE COURT: Go ahead.

11 THE WITNESS: It would have been DAF.

12 BY MR. MORRIS:

13 Q The DAF?

14 A Yeah.

15 Q Okay. Let's just ask this question. Is it your
16 understanding that these NAV valuation reports were made to
17 all holders of interests in HCLOF?

18 A Yes. And that would include the DAF. And I did leave off
19 that there were three former Highland employees long gone, or
20 at least not around at this point, who also owned very small
21 interests, and they would have gotten those statements as
22 well.

23 Q And does HCLOF also produce audited financial statements?

24 A It does, yes.

25 Q Can you go to Exhibit 60, please?

009728

1 A Six zero?

2 Q Yes, sir. A couple of questions here. Is this a document
3 that Highland would have received in the ordinary course of
4 business?

5 A Yes, it is.

6 Q Okay. And what is the NAV depicted on this page as of the
7 end of the year 2020?

8 A Well, you have to look through it, because this document
9 is actually dated 4/21/21, --

10 Q Okay.

11 A -- which you can see on Page 10 where it's signed. And
12 that shows a net asset value of \$50.4 million as of 12/31/21.
13 12/20. I'm sorry. And -- but it wasn't prepared until -- the
14 audits aren't done and we don't get this document until after
15 the directors sign off in April.

16 Q Okay.

17 MR. MORRIS: And Your Honor, I move for the admission
18 into evidence of these three HarbourVest-related documents,
19 30, 31-A, and 60.

20 MR. MCENTIRE: No objection.

21 THE COURT: They're admitted.

22 MR. MORRIS: Okay.

23 (Debtors' Exhibits 30, 31-A, and 60 are received into
24 evidence.)

25 BY MR. MORRIS:

1 Q Okay. Let me move on. We've seen Mr. Dondero's email
2 today. You've seen that before, correct?

3 A Yes.

4 Q Okay. What was your reaction when you got it?

5 A I was highly suspicious.

6 Q Why is that?

7 A Well, not to replot too much old ground, but this came
8 after he threatened me. He threatened me in writing. I'd
9 never been threatened in my career. I've never heard of
10 anyone else in this business who's been threatened in their
11 career. So anything I would get from him, I was going to be
12 highly suspicious.

13 It also followed the imposition of a TRO for interfering
14 with the business. He knew what was in the TRO and he knew
15 what it applied to, and it restricted him from communicating
16 with me or any of the other independent directors without
17 Pachulski being on it.

18 Furthermore, Pachulski had advised Mr. Dondero's counsel
19 that not only could they not communicate with us, if they
20 wanted to communicate they had to prescreen the topics.

21 And how do we know that? Because Dondero filed a motion
22 to modify the TRO. And that was all before this email.

23 In addition, that followed the termination of the shared
24 service arrangements, the approval of the disclosure
25 statement, and the demand to collect on the demand notes that

1 Mr. Dondero and his entities were liable for.

2 So at that point, he'd been interfering with the business,
3 he had threatened me, he was subject to a TRO, and I got this
4 email and I was highly suspicious.

5 Q Did you ever share this email with anybody at Farallon?

6 A No.

7 Q Did you ever share this email with anybody at Stonehill?

8 A No. And just to be clear, not just the email, the
9 contents. Never discussed it with them.

10 Q That was going to be my next question. Did you ever share
11 any information about MGM with anybody?

12 MR. MCENTIRE: Objection. Leading.

13 MR. MORRIS: I'm asking the question.

14 MR. MCENTIRE: No, you're leading.

15 MR. MORRIS: This is the whole --

16 MR. MCENTIRE: You're leading the witness.

17 THE COURT: Overruled. Finish the question.

18 BY MR. MORRIS:

19 Q Did you ever share any information concerning with MGM
20 with anybody at Stonehill before you learned that they had
21 purchased claims?

22 MR. MCENTIRE: Objection. Leading.

23 THE COURT: Overruled.

24 THE WITNESS: No. No, I did not.

25 BY MR. MORRIS:

Seery - Cross

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1 Q Did you ever share any information with anybody at
2 Farallon concerning MGM before you learned that they purchased
3 their claims?

4 MR. MCENTIRE: Objection. Leading.

5 THE WITNESS: No, I did not.

6 THE COURT: Overruled.

7 THE WITNESS: I'm sorry.

8 (Pause.)

9 THE WITNESS: You know, you just asked me something
10 about Stonehill.

11 THE COURT: No.

12 THE WITNESS: I'm sorry.

13 BY MR. MORRIS:

14 Q Yeah. No question.

15 A I wanted to clarify one.

16 Q What did you want to clarify, sir?

17 A Certainly didn't share anything about this email, any of
18 the contents of it. I don't know if I ever -- I don't know
19 exactly when Stonehill bought their claims, and they were
20 subject to the NDA to do the financing process. So I know
21 when Farallon told me they had bought their claims and I know
22 we never had any discussions at all before they acquired their
23 claims, and I don't know when Stonehill got those -- their
24 claims, so I don't know when -- what was in the data room or
25 what -- what might have been discussed about MGM while they

009732

1 were under an NDA.

2 Q Okay.

3 A But certainly nothing -- I never shared the contents of
4 this email, the substance of this email, the email at all.
5 That's what I wanted to clarify.

6 Q What data room are you talking about, sir?

7 A This was the data room related to the exit financing where
8 we sought exit financing and ultimately got exit financing
9 from Blue Torch Capital.

10 Q And who put together the data room?

11 A DSI, which was our financial consultants, and our finance
12 team.

13 Q And why did you -- did you delegate responsibility for
14 creating the data room to DSI and the members of your team you
15 just identified?

16 A Yeah, of course.

17 Q How come?

18 A I don't really know how to put together a data room.

19 Q Did you -- did you direct them to put anything in the data
20 room?

21 A Not specifically. We had a deck that we -- that certainly
22 I worked on and commented on, which would have been a general
23 overview of the -- of the post-reorganized Highland and the --
24 and the -- and the Claimant Trust. So I certainly commented
25 on that. But the specific information in the data room, I

Seery - Cross

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1 don't -- I never looked at it. I don't know what it is.

2 Q How many -- how many entities who were participating in
3 the exit facility process wound up making bids or offers?

4 A There were five that signed NDAs. Three provided
5 substantive proposals. One was verbal. That was Bardin Hill,
6 who'd been contacting me throughout the case, and they do this
7 kind of financing, and they submitted a competitive bid.
8 Stonehill in writing, and then amended, a more aggressive one,
9 in writing. And Blue Torch probably three, and the most
10 aggressive.

11 Q And did you give the -- did you give the opportunity to
12 your age-old friends at Stonehill?

13 A They're not my age-old friends. And no, they lost. They
14 were second, they were close, it was a good real proposal, but
15 they didn't win.

16 Q So, --

17 A Blue Torch won.

18 Q So is it fair to say that you -- did you pick the best
19 proposal that you thought provided the best value for the
20 company that you were managing?

21 MR. MCENTIRE: Your Honor, again, for the last ten
22 minutes, we've had nothing but leading questions. And it just
23 is --

24 MR. MORRIS: Fine. Happy to --

25 THE COURT: Sustained. Rephrase.

009734

1 BY MR. MORRIS:

2 Q Why did you pick Stone -- why did you pick Blue -- Blue-?

3 A Blue Torch.

4 Q Blue Torch, over the other bids?

5 A It was the best bid. So, structurally, it was the least
6 expensive, although they were extremely close. I had a lot of
7 confidence in Blue Torch because this type of financing is
8 what they do. And while you can never have a hundred percent
9 confidence that if somebody goes through the -- this is an
10 LOI, right, so this is a letter of intent. When they go
11 further, they may -- they may not complete it. But I had a
12 high degree of confidence that they would get there, because,
13 again, that's what they do. And they were the -- they were
14 just the better bid.

15 Q Okay. Do you recall that in Mr. Dondero's notes he wrote
16 down that he was told that Farallon had purchased their claims
17 in February or March?

18 A I saw that on what he claimed, yes.

19 Q And is that consistent with what you were told by Farallon
20 in March?

21 A They told me they acquired the claims -- they had acquired
22 the claims on March 15th, by email. I don't know if they
23 acquired them in February or March. Or even January. I know
24 they said they had them on March 15.

25 Q Did you ever speak with Farallon about anything having to

Seery - Cross

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1 do with the purchase of their claims?

2 MR. MCENTIRE: Objection. Leading.

3 THE COURT: Overruled.

4 THE WITNESS: Not -- not before they sent me that
5 email.

6 MR. MORRIS: I apologize. Withdrawn.

7 BY MR. MORRIS:

8 Q Before -- before learning of their purchase, had you had
9 any discussions with them about potential claim purchases?

10 MR. MCENTIRE: Objection.

11 THE WITNESS: No.

12 MR. MCENTIRE: Leading.

13 THE WITNESS: I'm sorry.

14 THE COURT: Overruled.

15 THE WITNESS: No, I didn't.

16 BY MR. MORRIS:

17 Q Okay. Before you learned that Stonehill had purchased
18 claims in the Highland bankruptcy, had you ever had any
19 conversation with them about the potential purchase of claims?

20 MR. MCENTIRE: Objection. Leading.

21 THE WITNESS: No, I don't -- I don't --

22 THE COURT: Overruled.

23 THE WITNESS: I'm sorry. I don't -- I don't believe
24 so, no.

25 BY MR. MORRIS:

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Seery - Cross

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1 Q Do you have any knowledge at all as to how the sellers
2 went about selling their claims?

3 A I have some knowledge now, post-effective date, that I
4 believe I have some understanding, but not a great one.

5 Q Did you ever communicate with any of the sellers about the
6 potential sale of their claims prior to the time their claims
7 were sold?

8 MR. MCENTIRE: Objection. Leading.

9 THE COURT: Overruled.

10 THE WITNESS: I did have a conversation with Eric
11 Felton who was the Redeemer representative on the Creditors'
12 Committee. And it came out of one of the emails I got. I
13 think it indicated that --

14 MR. MCENTIRE: Objection, hearsay, Your Honor. I
15 mean, hearsay, Your Honor.

16 THE COURT: Okay.

17 MR. MCENTIRE: It's hearsay.

18 THE COURT: Okay. He's about to say something that's
19 hearsay is the objection. Any response?

20 MR. MORRIS: I'm not offering it for the truth of the
21 matter asserted. I'm offering it for Mr. Seery's state of
22 mind and the extent of his communications. How about that?

23 MR. MCENTIRE: I don't see how you could offer it for
24 anything other than for the truth of the matter asserted.

25 It's coming from a third party, so I object to hearsay.

009737

Seery - Cross

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1 MR. MORRIS: Okay. You know what? We --

2 BY MR. MORRIS:

3 Q Other than the one conversation --

4 THE COURT: Are you withdrawing the question or do I
5 need --

6 MR. MORRIS: Yeah. This is just --

7 THE COURT: Okay. You're withdrawing the question.

8 MR. MORRIS: I'll withdraw the question.

9 THE COURT: Okay.

10 BY MR. MORRIS:

11 Q Other than the one conversation with Mr. Felton, did you
12 ever have a conversation with any seller prior to the time you
13 learned that Farallon or Stonehill --

14 MR. MCENTIRE: Objection. Leading.

15 BY MR. MORRIS:

16 Q -- purchased the claims?

17 THE COURT: Overruled.

18 THE WITNESS: No.

19 BY MR. MORRIS:

20 Q Did you play any role in facilitating or recommending to
21 Farallon or Muck that it purchase claims?

22 MR. MCENTIRE: Objection. Leading.

23 THE COURT: Overruled.

24 THE WITNESS: No. None whatsoever.

25 BY MR. MORRIS:

009738

Seery - Cross

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1 Q Did you play any role in facilitating or recommending that
2 Stonehill or Jessup purchase claims?

3 A No.

4 MR. MCENTIRE: Objection. Leading.

5 THE COURT: Overruled.

6 THE WITNESS: I'm sorry.

7 BY MR. MORRIS:

8 Q All right. Let's just finish up with compensation. Can
9 you go to Exhibit 41, please? Can you just identify that
10 document for the Court?

11 A This is the -- it's a memorandum agreement that sits on
12 top of an outline. It is the December 2 incentive
13 compensation agreed terms for Highland Capital --

14 Q Okay.

15 A -- and the Trust.

16 Q And when was this signed?

17 A It would have been -- the date is December 6th.

18 Q And --

19 A 2021. I'm sorry.

20 Q Okay. And when did you and the Committee members begin
21 discussing your compensation package?

22 A Shortly after the effective date, which was August 11,
23 2021.

24 Q And were there any negotiations during that intervening
25 three- or four-month period?

009739

1 A Considerable negotiations during that period, yes.

2 Q Can you go to the last page of Exhibit 41? Can you
3 describe that for the Court? I know it's hard to read, but --

4 A I --

5 Q -- the numbers don't matter so much as the infor... you
6 know, just, can you just describe --

7 A Yeah.

8 Q -- what's being conveyed?

9 A So it's very hard to read, but it says -- because it's
10 small -- Seery Proposal 1, Oversight Counter 1, Seery Proposal
11 2, Oversight Counter 2, and then it continues down. My
12 recollection is that we had four or five rounds of back-and-
13 forth that were meaningful. But it -- but it even took a
14 detour in the middle, because it started with my proposal,
15 which was pretty robust, and their response to me that they
16 didn't like the structure or the amount, and so then we
17 started talking about that. And then they -- after we were
18 kind of hitting numbers and structure at the same time, they
19 came back to me and said, stop, we've got to agree on the
20 structure before we agree on the amounts.

21 MR. MCENTIRE: Your Honor, I'm going to object as
22 it's hearsay and move to strike. This is -- he's not talking
23 about the document. He's talking about something outside of
24 the four corners of the document. I object to hearsay.

25 MR. MORRIS: Hearsay? There's no statement.

Seery - Cross

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1 THE COURT: There was --

2 MR. MORRIS: It's a description of what happened.

3 MR. MCENTIRE: But he's actually referring to
4 statements in his substantive comments.

5 THE COURT: Overruled. Okay.

6 MR. MORRIS: I move for the admission into evidence
7 of Exhibit 41.

8 THE COURT: Any objection?

9 MR. MCENTIRE: That's the memorandum agreement, Mr.
10 Morris? Is that it?

11 MR. MORRIS: Yes, sir.

12 MR. MCENTIRE: No objection.

13 THE COURT: Admitted.

14 (Debtors' Exhibit 41 is received into evidence.)

15 BY MR. MORRIS:

16 Q Can we go backwards to Exhibit 39, please? Can you
17 describe for the Court what that is?

18 A This is a redacted copy of minutes of the board meeting on
19 August 21 -- 26, 2021.

20 Q And there's a lot of stuff redacted there. Do you have an
21 understanding as to why there is redactions?

22 A It would have nothing to do with these issues that we're
23 discussing or the alleged *quid pro quo*.

24 Q Okay. Can you just read out loud the last portion that's
25 unredacted on the second page, beginning with "Mr. Seery

009741

1 reviewed"?

2 A It actually says, "Mr. Seery also presented the board with
3 an overview of his incentive compensation program proposal,
4 which would include not only Mr. Seery but the current HCMLP
5 team. The terms and structure of the proposal had been
6 previewed with the board in prior operating models presented
7 by Mr. Seery. Mr. Seery reviewed the proposal and stated his
8 view that the proposal was market-based and was designed to
9 align incentive between himself and the HCMLP team on the one
10 hand and the Claimant Trust beneficiaries on the other. The
11 board asked questions regarding the proposal and determined
12 that it would consider the proposal and revert to Mr. Seery
13 with a counterproposal."

14 Q All right. When you were -- when you were shown one of
15 these documents before, you were asked to identify Mr. Linn,
16 but you weren't asked about the others. Do you see Richard
17 Katz there?

18 A Yes.

19 Q Who's that?

20 A He's the independent member.

21 Q Did he play any role in the negotiation of your
22 compensation package?

23 A Yes. He was actively involved.

24 Q Okay. And how about Mr. Provost? Who's he?

25 A He is the Jessup person. Jessup is the board member.

Seery - Cross

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1 He's their representative on the board.

2 Q Okay.

3 MR. MORRIS: And I move for admission into evidence
4 of Exhibit 39.

5 MR. MCENTIRE: No objection, Your Honor.

6 THE COURT: Admitted.

7 (Debtors' Exhibit 39 is received into evidence.)

8 BY MR. MORRIS:

9 Q Let's go to Exhibit 40, please. Can you just describe for
10 the Court what that is?

11 A This is a subsequent board meeting minutes, August 30,
12 2021.

13 Q And can you just read into the record -- why are there
14 redactions?

15 A Again, they would -- if there are redactions, it would
16 have nothing to do with the issues that are being brought up
17 in this motion.

18 Q And can you just read into the record the paragraph
19 beginning, "Mr. Katz"?

20 A "Mr. Katz began the meeting by walking the Oversight Board
21 and Mr. Seery through the Oversight Board's counterproposal to
22 the HCMLP incentive compensation proposal, including the
23 review of the spreadsheet and summary of the counterproposal.
24 Discussion was joined by Mr. Linn and Mr. Stern. Mr. Seery
25 asked numerous questions and received detailed responses from

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Seery - Cross

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1 the Oversight Board. Mr. Seery and the Oversight Board agreed
2 to continue the discussion and negotiations regarding the
3 proposed incentive compensation plan for the Claimant Trustee
4 and the -- and the HCMLP."

5 Q So they didn't accept your original proposal that you made
6 in the earlier document?

7 A They did not.

8 Q Okay. And did negotiations continue?

9 A They did, yes.

10 MR. MORRIS: Before we go on, I move for admission
11 into evidence Exhibit 40.

12 THE COURT: Any --

13 MR. MCENTIRE: No objection.

14 THE COURT: It's admitted.

15 (Debtors' Exhibit 40 is received into evidence.)

16 BY MR. MORRIS:

17 Q Can you go to Exhibit 59, please? Can you describe for
18 the Court what this is?

19 A This is an email string between me and the Oversight Board
20 regarding the compensation proposal.

21 Q Okay. And directing your attention to the bottom, I
22 guess, of the second page, there is an email from Mr. Katz
23 dated October 26. Do you see that?

24 A At the bottom of the second -- oh, yes, yes.

25 Q Okay. Can you just read the sentence at the bottom of the

009744

1 page beginning "We propose"?

2 MR. MCENTIRE: Well, Your Honor, I would, first of
3 all, object to him just reading from the document until it's
4 been put into evidence.

5 THE COURT: I'm sorry, say again?

6 MR. MCENTIRE: I would object to Exhibit --

7 THE COURT: We can't pick things up on the record
8 when you don't speak in a mic.

9 MR. MCENTIRE: I object to him simply reading from
10 the document before the document is offered into evidence.

11 MR. MORRIS: Okay.

12 MR. MCENTIRE: Accepted into evidence.

13 MR. MORRIS: Sure. I'd move it into evidence.

14 MR. MCENTIRE: I object as hearsay.

15 MR. MORRIS: This is a present sense recollection --
16 recorded. It's a clear business record. It's a negotiation
17 that's happening over time. Mr. Seery is here to answer any
18 questions about authenticity.

19 MR. MCENTIRE: Well, first of all, it's an email
20 string involving communications with third parties. That's
21 hearsay in and of itself. And it's not been established that
22 this is a business record. And Mr. Morris's statements to
23 that effect, frankly, don't carry his burden. There's
24 internal hearsay contained throughout the document, Your
25 Honor, even if it is a business record.

Seery - Cross

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1 MR. MORRIS: Your Honor, just to be clear, let me
2 respond.

3 THE COURT: Uh-huh.

4 MR. MORRIS: Exceptions to hearsay rule. 803(1)
5 present sense impression; (2) -- (3) existing mental
6 impression, state of mind about motive, (5) recorded
7 recollection, (6) records of regularly-conducted activity, or
8 Federal Rule of Evidence 807, residual exception for
9 trustworthy and probative evidence. I'll take any of them.

10 MR. MCENTIRE: None of them apply.

11 MR. MORRIS: Okay.

12 THE COURT: Okay. Overruled.

13 MR. MORRIS: Thank you.

14 THE COURT: I admit it. 59's admitted.

15 (Debtors' Exhibit 59 is received into evidence.)

16 BY MR. MORRIS:

17 Q Can you just read that last sentence at the bottom of that
18 page?

19 A This is from Rich Katz to me.

20 Q Uh-huh.

21 A (reading) We propose doing this in two stages. First,
22 we'd like to come to agreement on structural, underscored,
23 elements of the ICP.

24 ICP means incentive compensation program or plan.

25 Only after we'd done that, when the board had greater

009746

1 understanding of what plan they were pricing, would we haggle
2 out the specific numbers, underscore, tier attachment points,
3 and percentage participation in each tier.

4 Q Okay. And going to the right-hand part of that, do you
5 see where it says, Salary J.S. Only?

6 A Yes.

7 Q Can you just, you know, generally describe for the Court
8 what the debate is or the negotiation that's happening on that
9 particular point?

10 A Well, this was brought up earlier. The salary was
11 \$150,000 a month. That was the same salary that I'd had
12 during the case that was approved by the Court. It had been
13 approved by the Committee, approved by the other independent
14 members. That was continuing. It was also contained as an
15 actual base salary in the plan and the Claimant Trust
16 Agreement, and they were never amended.

17 The Committee came back to me and said, we'd like that to
18 step down. And they'd like it to step down on a definitive
19 specific schedule, because they had a view that that would
20 incentivize me to work faster to make distributions before the
21 stepdown and that I wouldn't linger in the role. And the
22 yellow --

23 Q Can you just read the yellow out loud?

24 A That's --

25 Q Read the whole thing.

1 A That's my response.

2 Q Read the whole thing.

3 A (reading) Based on the required expertise, volume, and
4 personal risk of the work today, I do not think that any
5 formulaic reduction in base comp is appropriate. With the
6 complexity and amount of issues that I have to manage on a
7 daily basis, I currently do not have capacity to take on
8 significant outside work. Of course, things can change. If
9 they do, I am open to discussing reduction in the base. I
10 have no interest in sitting around doing nothing, having no
11 risk, and collecting the full base compensation. We can
12 include prefatory language and an agreement to revisit our
13 terms, but I do not see an avenue to set parameters to lock in
14 an agreement for the future at this time.

15 And then there's another paragraph on severance.

16 Q You can stop there.

17 MR. MORRIS: I have no further questions.

18 THE COURT: All right. Pass the witness.

19 MR. MCENTIRE: Do you have any questions?

20 A VOICE: No.

21 MR. MCENTIRE: Okay. How much time do I have,
22 please?

23 THE CLERK: So, the limit is at two hours and 32
24 minutes.

25 MR. MCENTIRE: All right.

Seery - Redirect

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1 REDIRECT EXAMINATION

2 BY MR. MCENTIRE:

3 Q Just a couple questions very quickly, Mr. Seery. Highland
4 Capital Management paid HarbourVest cash as part of the
5 settlement, correct?

6 A That's incorrect.

7 Q There was no cash component at all?

8 A There was not.

9 Q And in connection with the HarbourVest settlement,
10 HarbourVest transferred an interest in HCLOF to Highland
11 Capital or an entity affiliated with Highland Capital; is that
12 not correct?

13 A That's correct.

14 Q And that -- that entity -- and HCLOF, and HCLOF had an
15 interest in various CLOs, correct?

16 MR. MORRIS: Your Honor, I object. This is beyond
17 the scope of my cross, or redirect, however you prefer.

18 MR. MCENTIRE: Well, you spent a lot of time on
19 HarbourVest. I'm just trying to clear it up.

20 MR. MORRIS: I didn't say the word CLO. I did not
21 say the word CLO.

22 THE COURT: Overruled. He can go there.

23 If you'd please move the mic towards your voice.

24 BY MR. MCENTIRE:

25 Q And HCLOF had an interest in various CLOs, correct?

009749

Seery - Redirect

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1 A I believe it had an interest in five CLOs. Oh, that's not
2 true. It had an interest in five of the 1.0 CLOs. It also
3 owned one hundred -- basically, somewhere between 87 and a
4 hundred percent of Acis 3, 4, 5, 6, and 7, which is about a
5 billion dollars of CLOs to 10 (inaudible) leveraged vehicles,
6 and they owned basically all the equity, so that was the
7 driver of the value.

8 Q And various entities that were -- I mean, some of these
9 various CLOs had an interest in MGM stock, correct?

10 A The 1. -- the Highland 1.0s did. The value drivers I just
11 described -- Acis 3, 4, 5, 6, and 7 -- had no interest in MGM.

12 Q But one of them did have an interest in MGM?

13 A That's not correct.

14 Q What did you just say?

15 A 3, 4, 5, 6, and 7 did not have any interest in MGM.

16 Q Were there any CLOs that had an interest in MGM?

17 A Some of the 1.0 CLOs did, --

18 Q I see.

19 A -- yes.

20 MR. MCENTIRE: Pass the witness.

21 MR. MORRIS: No further questions.

22 THE COURT: Mr. Seery, I want to ask you one thing.

23 THE WITNESS: Yes, Your Honor.

24 EXAMINATION BY THE COURT

25 THE COURT: We dance around it a lot. The Highland

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Seery - Examination by the Court

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1 ownership of MGM stock. If think -- if you could confirm I've
2 heard this correct -- you said Highland itself owned 170,000
3 shares that were subject to a Frontier Bank lien?

4 THE WITNESS: Yes, Your Honor. I believe that's the
5 right amount. So, Highland directly owned about 170,000
6 shares. Those were liened up to Frontier. They were -- they
7 were never transferred. Highland never sold any MGM stock.

8 THE COURT: Okay. So Frontier still holds it or
9 what?

10 THE WITNESS: No. In fact, post-effective -- I
11 believe it was post-effective date, and with cash generated,
12 we -- we paid off the Frontier loan, --

13 THE COURT: Uh-huh.

14 THE WITNESS: -- released that lien, and then we held
15 those shares in MGM until the merger was consummated.

16 THE COURT: Okay.

17 THE WITNESS: So we tendered our shares into the --
18 into the merger and got the merger consideration, which was
19 cash.

20 THE COURT: Okay. And so there was that. But other
21 than that, you said Highland owned 50 percent of Multistrat,
22 which owned some MGM stock?

23 THE WITNESS: Multistrat had a -- I don't recall the
24 amount, but a material amount of MGM stock. That also -- so,
25 Highland owned 57 percent of Multistrat. Is also the manager

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Seery - Examination by the Court

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1 of Multistrat.

2 THE COURT: Uh-huh.

3 THE WITNESS: Multistrat did not sell any MGM stock.

4 It also tendered them into the merger as well.

5 THE COURT: Okay. And then you said Highland owned
6 some percentage of Restoration --

7 THE WITNESS: Restorations Capital Partners.

8 THE COURT: -- Capital Partners, which owned some
9 MGM stock?

10 THE WITNESS: Similarly, Highland is the manager of
11 what we call RCP. RCP owned a material amount of MGM stock.
12 RCP did not sell any MGM stock. However, in 2019, you'll
13 recall that Mr. Dondero sold \$125 million of stock
14 postpetition out of RCP. It was MGM stock. He sold it back
15 to MGM. We had a -- we had a hearing on it, because
16 subsequently the Independent Board learned about it, the
17 Committee learned about it, they had not -- it had not been
18 disclosed, but there was a -- what we thought was a binding
19 agreement with MGM, and MGM indicated that they were going to
20 hold us to it, and so we had a hearing about approving that
21 transaction. The Committee was not happy.

22 THE COURT: Okay. I'm fuzzy on when that was. You
23 said?

24 THE WITNESS: That would have been in early 2020,
25 probably April-ish timeframe.

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Seery - Examination by the Court

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1 THE COURT: Okay.

2 MR. MORRIS: Your Honor?

3 THE WITNESS: The transaction was in November, I
4 believe.

5 MR. MORRIS: If it's helpful, Your Honor, you can
6 find it at Docket 487.

7 THE COURT: Okay.

8 MR. MORRIS: I think that's the objection from the
9 Committee where the issue was -- comes up at least at one
10 time.

11 THE COURT: Okay. And then I think this is the last
12 category I heard, that HCM and its specially-created sub owned
13 just over 50 percent of HCLOF, and it in turn owns interest in
14 a lot of CLOs, and a few of those, what you call the 1.0 CLOs,
15 did own some MGM stock?

16 THE WITNESS: That's correct. So if you look on the
17 audited financials that we had introduced into evidence,
18 you'll see actually every asset that HCLOF owns. There's no
19 MGM in there. It does own interest. There were minority
20 interests in five or six of the 1.0 CLOs. Grayson,
21 Greenbrier, Gleneagles, Brentwood, Liberty, and one other.
22 And it had interest in those, but it never owned any MGM stock
23 and it never traded any MGM stock. It didn't own any.

24 THE COURT: All right. Did I cover the universe of
25 what MGM stock was owned by Highland or something Highland had

009753

1 an interest in?

2 THE WITNESS: Yeah. So, the ones that HCLOF had an
3 interest in that I just listed, those -- Jasper was the other
4 one. I apologize. The -- they owned -- they owned MGM stock
5 among their other -- they had a lot of other assets. The
6 other CLOs, the 1.0 CLOs that Highland had, every one of them
7 owned MGM stock. None of them sold or bought any stock.
8 Those all tendered into the merger as well. Highland did not
9 own any interest in any of those entities.

10 THE COURT: Uh-huh.

11 THE WITNESS: It just managed them.

12 THE COURT: Okay. And this is my last question.
13 Someone brought up or it came up today that exactly two years
14 ago today -- I didn't remember we were on an anniversary of
15 that -- but was when we had a hearing, and I think it was a
16 contempt hearing, but I had, I guess, read in the media, like
17 many other human beings, an article about the MGM-Amazon
18 transaction, and I had said I had hope in my heart and brain
19 that this could be an impetus or a triggering event for maybe
20 a settlement. And that was kind of quickly pooh-poohed, if
21 you will.

22 Remind me why I was quickly persuaded, oh well, I guess
23 that's not going to happen. I just can't remember what I
24 heard that day.

25 THE WITNESS: Well, it was widely known that

Seery - Examination by the Court

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1 Highland, meaning not the 171,000 --

2 THE COURT: Uh-huh.

3 THE WITNESS: -- but the entities that Highland or
4 related entities, including DAF, the other Dondero entities,
5 controlled a lot of Highland stock, as even Mr. Dondero said
6 between Anchorage --

7 THE COURT: You mean MGM?

8 THE WITNESS: MGM, I'm sorry. Between -- there were
9 only five major holders. There was the two we just mentioned
10 and Davidson Kempner and Monarch and Owl Creek, and just a few
11 other big holders.

12 And so Your Honor would have learned it from the case, but
13 you also would have learned it from the paper, that any time a
14 holder is mentioned, it's first Anchorage, because they owned
15 the biggest piece, and Kevin Ulrich, who was the chairman of
16 Anchorage, was also the chairman of MGM. And then Highland
17 was always mentioned.

18 The reason that it didn't have some great amount of
19 capital that went on to Highland, although there was money
20 from RCP and there was money from MGM, is Highland doesn't own
21 the stock that's -- or interests in the 1.0 CLOs that owned
22 all of it. We just manage it.

23 THE COURT: Uh-huh.

24 THE WITNESS: And that goes to various other
25 entities, including, in large part, to Dondero entities. So

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Seery - Examination by the Court

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1 there wasn't a big windfall to Highland from that.

2 The possibility of some upside from HCLOF, because it
3 owned small interests in those five, there was some value in
4 that, but a lot of it got tied up in the litigation that other
5 entities, Dondero entities, are bringing against U.S. Bank and
6 Acis, which has tied up everything in that -- those
7 distributions.

8 THE COURT: Okay. All right. Thank you. You are
9 excused from the stand.

10 THE WITNESS: Thank you, Your Honor.

11 MR. STANCIL: I owe you a docket number, Your Honor.
12 You said don't let us leave before we give you a docket number
13 for that second contempt order. We promised to come back. It
14 was #2660.

15 THE COURT: Okay. Got it.

16 MR. STANCIL: Which -- did we move that into
17 evidence?

18 MR. MORRIS: No. We asked the Court to take judicial
19 notice.

20 THE COURT: I will take judicial notice of 2660, --

21 MR. STANCIL: Thank you, Your Honor.

22 THE COURT: -- I already said. Thank you.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: You're excused.

25 (The witness steps down.)

009756

1 THE COURT: All right. Are you going to have any
2 other evidence, Mr. McEntire?

3 MR. MCENTIRE: Your Honor, as I respond to your
4 question, I think we have 30 -- approximately 30 minutes left.

5 THE CLERK: Twenty-six, yes.

6 MR. MCENTIRE: Twenty-six. We do have another
7 witness. We also have a closing final argument. And we also
8 have an opportunity -- we want to reserve an opportunity for
9 our experts that is still under advisement.

10 So my first action would be to ask for an extension of
11 time, or we would like to add to our time limit. Instead of
12 just three hours, we'd like to increase the time so we can
13 accomplish all these things.

14 I mean, if the Court is unwilling to give us additional
15 time, then I will be forced not to call another witness. I
16 will move to a very short final argument. I need to preserve
17 some time for my experts, should you allow them to testify.

18 THE COURT: Well, --

19 MR. MORRIS: May I respond?

20 THE COURT: -- you don't have to preserve time. I'm
21 either going to allow you to put on your experts, and we said
22 30 minutes/30 minutes, --

23 MR. MORRIS: That was what I was going to say, Your
24 Honor.

25 THE COURT: Okay.

1 MR. MORRIS: There's no prejudice here. Nobody's
2 being harmed. There's no appellate issue. I thought we were
3 really clear. Everybody gets their three hours today. We
4 will file our reply brief on Monday. The Court will determine
5 both whether it needs to hear expert testimony and whether or
6 not our motion should be sustained. If the Court denies the
7 motion, we'll take a couple of depositions and each side will
8 get whatever period of time the Court orders.

9 But, you know, the attempts to create an appellate record
10 are just -- you know, that's not -- there's no issue here. He
11 can -- he's got 26 minutes. He can put on his witness, he can
12 make his closing in the 26 minutes that they've always had.

13 THE COURT: All right. Well, we have --

14 MR. MCENTIRE: May I caucus? May I caucus very
15 quickly, Your Honor?

16 THE COURT: Okay. Uh-huh. And while you're
17 caucusing, we have our game plan on the experts. We know how
18 that's going to happen. And I'm not extending the three
19 hours.

20 MR. MORRIS: (sotto voce) We have 62 minutes?

21 (Pause.)

22 MR. MCENTIRE: Your Honor, accordingly, I'll just --
23 we'll move into a final argument at this time.

24 THE COURT: Okay. So you rest?

25 MR. MCENTIRE: I rest.

Patrick - Direct

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1 THE COURT: All right.

2 MR. MORRIS: We call Mark Patrick.

3 THE COURT: All right. Mr. Patrick, you've been
4 called to the witness stand.

5 MR. MORRIS: I just need to find my examination
6 notes. Just give me one moment, please.

7 THE COURT: All right. Please raise your right hand.
8 Could you remain standing, please.

9 (The witness is sworn.)

10 THE COURT: All right. You may be seated.

11 MARK PATRICK, DEBTORS' WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. MORRIS:

14 Q Hi, Mr. Patrick.

15 A Hello.

16 Q Did you ever meet with anybody at the Texas State
17 Securities Board?

18 A No.

19 Q Do you know if -- do you know anybody who ever met with
20 anybody at the Texas State Securities Board concerning
21 Highland?

22 A Yes.

23 Q And who met with the Texas State Securities Board
24 concerning Highland?

25 A Ronnie (phonetic) Patel.

009759

Patrick - Direct

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1 Q And is that a lawyer?

2 A Yes.

3 Q Do you know who retained Mr. -- that lawyer?

4 A Yes.

5 Q Who retained that lawyer?

6 A The DAF, the Charitable DAF Fund. Or one of its entities.

7 Q Okay. And is it your understanding that the DAF Fund or

8 one of its charitable entities filed a complaint with the

9 Texas State Securities Board?

10 A Yes.

11 Q Okay. Thank you very much. Does Hunter Mountain owe any
12 money to Mr. Dondero?

13 A No.

14 Q Is there a promissory note that's outstanding that Mr.

15 Dondero has pursuant to which Hunter Mountain owes him \$60-

16 plus million?

17 A No.

18 Q Who created Hunter Mountain?

19 A Well, I don't recall specifically. I just recall the

20 facts that, when Hunter Mountain was created, Thomas Surgent,

21 the chief compliance officer of Highland Capital Management,

22 who was representing the Dugaboy Investment Trust as well as

23 Highland Capital legally with respect to that transaction,

24 requested to Rand that the Hunter Mountain Investment Trust be

25 created for purposes of Highland filing its ADV with the SEC.

009760

Patrick - Direct

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1 It was my understanding that when the ADV would be filed, sort
2 of the ownership change would -- chain would stop at Hunter
3 Mountain.

4 Q Okay. Dugaboy is Mr. Dondero's family trust, correct?

5 A No. But I'll help you along. Just please use the full
6 name of the trust.

7 Q If I refer to the Trust, will you know that that's -- is
8 that for the Hunter Mountain Investment Trust, or do you want
9 me to use trust --

10 A There's no entity called Dugaboy. Just Dugaboy. There's
11 not.

12 Q Okay.

13 A It's a shorthand. I'm --

14 Q Okay. I'll refer to Dugaboy then, okay?

15 A What are we referring to?

16 Q The trust known as Dugaboy.

17 A Okay. Fair enough. Go ahead.

18 Q Okay. Did Dugaboy contribute a portion of its ownership
19 interest in Highland to the Highland -- to the Hunter Mountain
20 Investment Trust?

21 A Contribute? No.

22 Q Did it transfer?

23 A Yes.

24 Q And did it receive in exchange a promissory note from
25 Hunter Mountain?

009761

Patrick - Direct

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1 A Yes, it did.

2 Q Okay. And Mr. Dondero is the lifetime beneficiary of
3 Dugaboy, correct?

4 A Yes and no. It's a placeholder -- a placeholder provision
5 that's never been used.

6 MR. MCCLEARY: Your Honor, pardon me. Pardon me.
7 Objection, relevance, Your Honor.

8 THE COURT: Relevance?

9 MR. MORRIS: This is -- we've been told so many times
10 that Mr. Dondero has no interest in this case, he has nothing
11 to do with Hunter Mountain. He's the lifetime beneficiary of
12 Dugaboy. And if I --

13 THE WITNESS: That provision has never been invoked.
14 He's received no money through that provision.

15 THE COURT: Okay. Just wait. We're resolving --

16 MR. MORRIS: Right.

17 THE COURT: -- an objection at the moment.

18 BY MR. MORRIS:

19 Q Can we turn to Exhibit 51?

20 THE COURT: I'm still working on the objection.

21 MR. MORRIS: I'm going to try and lay a foundation.
22 Okay?

23 THE COURT: Okay. So he's withdrawing the question.

24 MR. MCCLEARY: He's withdrawing the question? Okay.

25 THE COURT: Okay.

009762

Patrick - Direct

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1 BY MR. MORRIS:

2 Q You have a binder in front of you, sir. Can you go to
3 Exhibit 51?

4 THE COURT: And this is Highland's Exhibit 51?

5 MR. MORRIS: Yeah.

6 THE COURT: Okay.

7 BY MR. MORRIS:

8 Q And is that a promissory note that was made --

9 A Yes, it is.

10 Q -- that was made by Hunter Mountain in favor of Dugaboy
11 back in 2015?

12 MR. MCCLEARY: Objection, relevance, Your Honor.

13 MR. MORRIS: I'm trying to connect Mr. Dondero to
14 Hunter Mountain.

15 THE COURT: Okay. Overruled.

16 THE WITNESS: Yeah. It's a secured promissory note
17 with the amount of approximately \$62.6 million signed by
18 Beacon Mountain, LLC, --

19 MR. MORRIS: Uh-huh.

20 THE WITNESS: -- as administrator for Hunter Mountain
21 Investment Trust.

22 BY MR. MORRIS:

23 Q Okay. And as the -- what's your role with Hunter Mountain
24 today?

25 A And it's in favor, just to answer your question, it's in

009763

Patrick - Direct

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1 favor of the Dugaboy Investment Trust. That's where I was
2 just being a little stickler --

3 Q I appreciate that.

4 A -- previously. Sorry.

5 Q I do.

6 A Okay. What is your question?

7 Q What's your role with Hunter Mountain today?

8 A I am the administrator.

9 Q When did you become the administrator?

10 A On or about August of 2022.

11 Q Okay. How did you become the administrator?

12 A Through the acquisition of Rand Advisors.

13 Q And does Hunter Mountain have any employees?

14 A No.

15 Q Does it have any operations?

16 A No.

17 Q Does it generate any revenue?

18 A Not -- not currently.

19 Q Okay. Did it generate any revenue in 2022?

20 A No.

21 Q Does it own any assets?

22 A Yes.

23 Q What does it own?

24 A It has -- it's my understanding it has a contingent
25 beneficiary interest in the Claimants Trust.

009764

Patrick - Direct

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1 Q And that's the only asset it has, right?

2 A Correct.

3 Q So that if it -- if that interest has no value, then
4 Hunter Mountain has no ability to pay the Dugaboy note. Fair?

5 A (sotto voce) If that interest has no value?

6 That is correct.

7 Q Okay.

8 MR. MORRIS: I move Exhibit 51 into evidence.

9 MR. MCCLEARY: Your Honor, relevance. Objection.

10 THE COURT: Your response?

11 MR. MORRIS: Mr. Dondero desperately needs Hunter
12 Mountain to win in this lawsuit because otherwise his family
13 trust will get nothing on this \$63 million note.

14 THE COURT: Okay. Overrule the objection. It's
15 admitted.

16 (Debtors' Exhibit 51 is received into evidence.)

17 BY MR. MORRIS:

18 Q Neither you or any representative of Hunter Mountain has
19 ever spoken with any representative of Farallon, correct?

20 A Correct.

21 Q Neither you nor any representative of Hunter Mountain has
22 ever spoken with anybody at Stonehill, correct?

23 A Correct.

24 Q You have -- neither you nor Hunter Mountain have any
25 personal knowledge about a *quid pro quo*, correct?

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Patrick - Direct

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1 A (sotto voce) Nor Hunter Mountain have any personal
2 knowledge about a *quid pro quo*.

3 Correct.

4 Q Neither you nor anybody at Hunter Mountain have any
5 personal knowledge about how Mr. Seery's compensation package
6 was determined, correct?

7 A Correct.

8 Q Neither you nor anybody at Hunter Mountain had any
9 knowledge about the terms of Mr. Seery's compensation package
10 until the Highland parties voluntarily disclosed that in
11 opposition to the Hunter Mountain motion, correct?

12 A No. I --

13 MR. STANCIL: Objection, relevance, Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: No. I seem to -- I seem to have an
16 awareness that the performance fee was amended at a certain
17 time post-confirmation, or, you know, around the confirmation
18 time period. And so that's with respect to the compensation.
19 I -- just myself.

20 BY MR. MORRIS:

21 Q Can you tell Judge Jernigan everything you know or
22 everything you knew before receiving Highland's opposition to
23 this motion about Mr. Seery's compensation as the CEO of the
24 Reorganized Debtor at the Claimant Trustee?

25 MR. MCCLEARY: Objection, Your Honor. That's

009766

Patrick - Direct

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1 overboard and an unclear question.

2 THE COURT: Overruled. He's gone through some
3 specific things now. I guess he's just trying to encompass
4 anything we haven't covered.

5 THE WITNESS: Yeah. I had a -- I personally had a
6 general understanding that Mr. Seery's compensation changed
7 after the claims trading to put in a performance-based-type
8 measure. But I do recall that it was always very -- it was
9 unclear exactly the terms.

10 BY MR. MORRIS:

11 Q Okay. Did you learn anything else?

12 A Such as?

13 Q Just, did you ever learn anything else about Mr. Seery's
14 compensation package that you haven't testified to yet?

15 MR. STANCIL: Your Honor, objection. Vague.

16 THE COURT: Overruled.

17 THE WITNESS: No.

18 BY MR. MORRIS:

19 Q Okay. Neither you nor Hunter Mountain has any personal
20 knowledge whatsoever about any due diligence that Stonehill
21 did in connection with the purchase of claims, correct?

22 MR. MCCLEARY: Your Honor, he's getting into
23 allegations in the complaint which involve attorney work
24 product, so we object on the basis of invading the attorney
25 work product.

009767

Patrick - Direct

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1 THE COURT: Overruled.

2 THE WITNESS: Can you restate the question again?

3 BY MR. MORRIS:

4 Q Yes, sir. Neither you nor Hunter Mountain have any
5 personal knowledge as to what due diligence Stonehill did
6 before purchasing its claims in this case, correct?

7 MR. MCCLEARY: Objection. Attorney work product.
8 Invasion of that. Could I --

9 THE COURT: I just ruled.

10 MR. MCCLEARY: I understand.

11 THE COURT: I just --

12 MR. MCCLEARY: Could I have a running objection to
13 this line of questioning on that basis, Your Honor, invasion
14 of attorney work product?

15 THE COURT: Why don't you explain why it's attorney
16 work product. I'm missing --

17 MR. MCCLEARY: Because they might -- he would have
18 knowledge from the efforts and investigation through attorneys
19 in the case. I assume he's not asking -- you can't separate
20 that, potentially. So he's getting into attorney work
21 product.

22 MR. MORRIS: I'm asking for facts.

23 THE COURT: He's asking for facts. I overrule.

24 BY MR. MORRIS:

25 Q Can you answer the question, sir?

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Patrick - Direct

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1 A Yeah. I'm not aware -- I'm not personally aware of how
2 much work Farallon did, or Stonehill.

3 Q You have no knowledge whatsoever about the diligence
4 Stonehill did before purchasing its claims, correct?

5 A Well, I would generalize now is that they did nothing.

6 Q And that's on the basis of Mr. Dondero's testimony,
7 correct?

8 A I would just call it on a basis of our general inquiry,
9 which would be including, in part, Mr. Dondero's testimony.

10 Q What else are you relying upon for your conclusion that
11 you just described other than Mr. Dondero's? What other
12 facts?

13 A Yeah, we -- yeah, we have not uncovered any facts that
14 indicated that they did conduct any due diligence of any sort.

15 Q Okay. And are you -- do you have any personal knowledge
16 as to what Farallon did in connection with its due diligence
17 prior to buying its claim?

18 A Yeah. We have not been able to find any facts that would
19 suggest that Farallon conducted any due diligence of any kind.

20 Q Okay.

21 MR. MORRIS: One second, Your Honor.

22 (Pause.)

23 BY MR. MORRIS:

24 Q Who's paying Hunter Mountain's legal fees?

25 A Hunter Mountain is paying -- is legally obligated and

009769

Patrick - Direct

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1 paying its own legal fees.

2 Q If it generates no income and its only assets is the
3 interest in Highland, where is it getting the funds to pay
4 legal fees?

5 MR. MCCLEARY: Objection, Your Honor. This is
6 irrelevant and invades the attorney-client privilege.

7 MR. STANCIL: Your Honor, I'm happy to read a Fifth
8 Circuit case that says the identity of a third-party payer of
9 attorneys' fees is not privileged. I would refer them to *In*
10 *re Grand Jury Subpoena*, 913 F.2d 1118, a 1990 Fifth Circuit
11 case. I can read from Judge Jones' opinion, but you tell me
12 how much you want to hear on this.

13 THE COURT: Okay. I overrule your objection. He can
14 answer.

15 THE WITNESS: There is a settlement agreement by
16 Hunter Mountain Investment Trust as well as the Dugaboy
17 Investment Trust that provides for the payment of attorney
18 fees.

19 MR. MORRIS: No further questions, Your Honor.

20 THE COURT: Okay. Cross?

21 MR. MCCLEARY: Yes, Your Honor, briefly.

22 CROSS-EXAMINATION

23 BY MR. MCCLEARY:

24 Q Mr. Patrick, how would you describe Mr. Dondero's
25 relationship with Hunter Mountain Investment Trust today?

009770

1 A None.

2 Q You were asked some -- let me ask you about litigation,
3 and litigation involving the sub-trust. Has Hunter Mountain
4 been involved in litigation with Mr. Kirschner?

5 A Yes.

6 Q Okay. And what is your understanding of Mr. Kirschner's
7 role?

8 MR. MORRIS: Your Honor, while I would love for them
9 to continue --

10 MR. MCCLEARY: He's the --

11 MR. MORRIS: -- to use their time, I object that
12 it's beyond the scope of my examination. They passed on the
13 witness. They rested their case. He should be limited to the
14 scope of my inquiry.

15 THE COURT: Okay. How does this tie to direct?

16 MR. MCCLEARY: Your Honor, it -- just very generally.
17 This is --

18 THE COURT: Okay. I need to know how it ties to the
19 direct.

20 MR. MCCLEARY: This doesn't tie directly to the
21 direct, Your Honor.

22 THE COURT: Then it's beyond the scope, you
23 acknowledge?

24 MR. MCCLEARY: Yes, Your Honor.

25 THE COURT: Okay. Sustained, then.

Patrick - Cross

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1 MR. MCCLEARY: Okay.

2 BY MR. MCCLEARY:

3 Q Mr. Patrick, has Hunter Mountain Investment filed any
4 litigation as a plaintiff other than its efforts to be a
5 plaintiff in this lawsuit and its action as a petitioner in
6 the Rule 201 matter earlier this year in Dallas state court?

7 A The 202.

8 Q 202, yes.

9 A No, it has not.

10 Q All right. And then it's -- has it been a party, then, to
11 any other litigation other than the efforts to file this
12 action, the Rule 202 action, and has it been a defendant in
13 any lawsuits?

14 A To my understanding, no.

15 Q Is it involved as a defendant in the Kirschner litigation?

16 A Yes.

17 Q Mr. Kirschner is suing Hunter Mountain; is that correct?

18 A That is correct.

19 Q Okay. So, is Hunter Mountain a vexatious litigant?

20 MR. MORRIS: Objection, Your Honor. This is now
21 really beyond the scope. We're not doing -- this is -- we're
22 not doing it. I'm not letting -- because there's a vexatious
23 litigant motion pending now in the district court right now
24 before Judge Starr. This has nothing to do with anything I
25 asked.

009772

Patrick - Cross

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1 THE COURT: Okay.

2 MR. MCCLEARY: They're trying to draw --

3 THE COURT: You've already asked him is it a party in
4 any other litigation besides the 202 and this attempted one,
5 so where are we going with this?

6 MR. MCCLEARY: Well, they're just trying to draw Mr.
7 Dondero into this and -- this vexatious litigant argument, and
8 we're just developing the fact that obviously Hunter Mountain
9 has only filed -- attempting to file this action and a Rule
10 202 proceeding. So they're not involved in a lot of
11 litigation and they're not a vexatious litigant.

12 THE COURT: Okay. I think I'll sustain that and we
13 can just move on.

14 MR. MCCLEARY: Okay. Then I'll pass the witness.
15 Thank you, Your Honor.

16 THE COURT: Okay. Any redirect?

17 MR. MORRIS: No, thank you, Your Honor.

18 THE COURT: All right. You are excused, Mr. Patrick.

19 (The witness steps down.)

20 THE COURT: Anything else?

21 MR. MORRIS: Just a time check for both sides and
22 let's get to closings.

23 THE COURT: Okay. Caroline?

24 THE CLERK: Movant has 23 minutes left and the
25 Respondents have 47.

009773

1 THE COURT: 23 and 47. Any other evidence from the
2 Respondents?

3 MR. MORRIS: That is a fair question.

4 (Discussion.)

5 MR. MCCLEARY: Your Honor, I just want to confirm
6 that all the exhibits that they did not object to have been
7 admitted into evidence.

8 THE COURT: All right. Well, let me --

9 MR. MCCLEARY: We do offer them.

10 MR. MORRIS: Oh.

11 THE COURT: Hang on.

12 MR. MORRIS: Did I get Exhibit 45, Your Honor?

13 THE COURT: Just a moment. I'm doing two things at
14 once here. 45 is in.

15 MR. MORRIS: Okay.

16 THE COURT: All right. On HMIT's exhibits, okay,
17 first, as we all know, 29 through 52 are carried until -- if
18 we have another hearing with the experts.

19 (HMIT's Exhibits 29 through 52 carried.)

20 THE COURT: I'm showing we have -- and speak up if
21 anyone questions this -- I show that we have Hunter Mountain
22 Exhibits 3 and 4, and then 7 through 10, 12 through 23, and 26
23 through 38, and 53 through 57, 64, 65, and then 67 through
24 seventy --

25 (HMIT's Exhibits 3, 4, 7-10, 12-23, 26-38, 53-57, 64, 65,

1 67-70 are received into evidence.)

2 MR. MCCLEARY: Your Honor, I apologize. From 36 --
3 26 to 32 are in?

4 THE COURT: I believe that was part of the
5 stipulation, Mr. Morris, right?

6 MR. MCCLEARY: Yes.

7 MR. MORRIS: I think that's right.

8 THE COURT: Okay.

9 MR. MORRIS: We really didn't object to very many.

10 THE COURT: Yes.

11 MR. MCCLEARY: That would be 25, too. That would
12 include 25?

13 MR. STANCIL: No. Objection. 25 is not --

14 THE COURT: It's not admitted.

15 MR. STANCIL: It's not in evidence.

16 THE COURT: 25 and 24 were not admitted.

17 MR. MORRIS: Correct. Those are my emails.

18 THE COURT: Okay. So --

19 MR. MCCLEARY: 25 is an article.

20 THE COURT: Your 25 was John Morris Email Re: Text
21 Messages dated March 10, 2023.

22 MR. MCCLEARY: Okay.

23 THE COURT: Okay. I can't remember where I left off.
24 I think I left off -- I'll just repeat after the expert
25 exhibits that are carried. I've admitted 53 through 57. I

1 have admitted 64, 65, 67 through 71.

2 (HMIT's Exhibit 71 is received into evidence.)

3 Now, I'm not sure if I ended up admitting 72. That was
4 the articles. I can't remember if you stipulated on that
5 finally.

6 MR. MORRIS: I said they --

7 MR. MCCLEARY: They had no objection.

8 MR. MORRIS: -- they come in --

9 THE COURT: Not for the truth of the matter asserted.

10 MR. MORRIS: -- self -- exactly.

11 THE COURT: Okay.

12 MR. MORRIS: Self-authenticating.

13 THE COURT: So 72 is in.

14 MR. MCCLEARY: Okay.

15 (HMIT's Exhibit 72 is received into evidence.)

16 THE COURT: Then we had some pleadings. I think 73,
17 74, 75 are in, but again, not for the truth of the matter
18 asserted in any advocacy on 73 and 74. And then 77, 78, 79
19 are in. And that's it.

20 (HMIT's Exhibits 73, 74, 75, 77, 78, and 79 are received
21 into evidence.)

22 MS. DEITSCH-PEREZ: Your Honor, I didn't make an
23 appearance, but I was taking notes (inaudible).

24 MR. MCCLEARY: Your Honor, I believe 80 should be in.

25 MR. MORRIS: No objection to 80. It's on our -- it's

1 part of our Exhibit 5.

2 THE COURT: Okay. 80 is in. Admitted.

3 (HMIT's exhibit 80 is received into evidence.)

4 MR. MORRIS: Yeah. That's really Section A of that
5 thing that I gave you this morning.

6 THE COURT: If Ms. Deitsch-Perez wants to consult
7 with the Hunter Mountain lawyers, she can. I don't know --

8 MR. MORRIS: Can I go through quickly mine, Your
9 Honor? Because we actually never had the opportunity to put
10 our exhibits in.

11 THE COURT: Okay. Let's make sure we're to --

12 MR. MORRIS: Okay. I'm sorry. I'm sorry.

13 THE COURT: -- closure on the Hunter Mountain
14 exhibits.

15 MR. MORRIS: I'm sorry.

16 THE COURT: Anything I said that you disagree with?
17 I don't think --

18 (Pause.)

19 THE COURT: Okay. Let's hurry up. What is the
20 controversy?

21 A VOICE: Roger? The Court's addressing you.

22 MR. MCCLEARY: Oh. Excuse me, Your Honor. So, just
23 a little unclear of whether you have Exhibits 21 through 25
24 admitted.

25 THE COURT: I have 21, 22, and 23. Not 24. Not 25.

1 Okay. Anything else?

2 MR. MCCLEARY: Okay. Then we do offer 24 and 25.

3 THE COURT: You offered them. I did not admit them.

4 MR. MCCLEARY: Okay. 76. I believe -- was that --
5 you're carrying?

6 MS. DEITSCH-PEREZ: Carried.

7 MR. MCCLEARY: You're carrying that?

8 THE COURT: Okay. I carried that and --

9 MR. MCCLEARY: It's part of the expert issue.

10 THE COURT: Okay. Yes, part of the expert. So it's
11 carried.

12 (HMIT's Exhibit 76 is carried.)

13 (Pause.)

14 MR. MCCLEARY: I understand you've admitted 53
15 through 83, although some of them have now not been approved.

16 THE COURT: All right. Well, we need to clarify. 58
17 through 63, you think you offered them and I admitted them,
18 but not for the truth? I remember that being discussed for 58
19 through 63. Are you actually offering them?

20 MR. MCCLEARY: Yes. 58 through 63.

21 THE COURT: All right. And Mr. Morris, you
22 ultimately agreed that yes, but not for the truth of the
23 matter asserted?

24 MR. MORRIS: That's right, Your Honor.

25 THE COURT: Okay. So they are admitted. Okay.

1 (HMIT's Exhibits 58 through 63 are received into
2 evidence.)

3 THE COURT: And then there was an objection to the
4 Mark Patrick declaration for the same thing, not for the truth
5 of the matter asserted.

6 MR. MORRIS: Exactly.

7 THE COURT: But you agree as long as it's --

8 MR. MORRIS: Correct.

9 THE COURT: Okay. So what that means is, to recap,
10 53 through 75 are admitted, although some of those are only --
11 they're not for the truth of the matter asserted. And then 77
12 through 80 are admitted. Okay?

13 MR. MCCLEARY: And 76? We offered 76.

14 THE COURT: That's -- we carried it. We carried it.
15 It relates to the expert.

16 MR. MCCLEARY: Carried it.

17 (Pause.)

18 MR. MCCLEARY: Thank you, Your Honor.

19 THE COURT: Okay. Now let's straighten out
20 Highland's exhibits. So, I'm showing 1 through 16 have been
21 admitted, and then 25 through 31-A?

22 MR. MORRIS: 25 through 31-A?

23 THE COURT: I'm sorry. Yes. 25 through 31-A.

24 MR. MORRIS: Okay.

25 THE COURT: And then 34. And then 39, 40, 41, and

1 then 45. 51, 59, and 60.

2 MR. MORRIS: Okay. So I'm going to do my best not to
3 burden the Court. I'm trying to focus. We move for the
4 admission into evidence of Exhibit 32, which is Mr. Dondero's
5 objection to the HarbourVest settlement. And the reason that
6 we're offering it is because he made no mention of any concern
7 at all that the settlement implicated material nonpublic
8 inside information.

9 THE COURT: All right. Any objection?

10 MR. MCCLEARY: 32?

11 THE COURT: Uh-huh.

12 MR. MCCLEARY: Yes, Your Honor. Relevance and
13 hearsay.

14 THE COURT: Overruled. And I can take judicial
15 notice of it in any event.

16 (Debtors' Exhibit 32 is received into evidence.)

17 MR. MORRIS: We move for the admission into evidence
18 of Exhibit 33, which is the recent letter from the Texas State
19 Securities Board declining to take any action after conducting
20 an investigation of the Dugaboy complaint.

21 THE COURT: Okay. Any objection?

22 MR. MCCLEARY: We object on the grounds of relevance,
23 403, hearsay, and authenticity, Your Honor.

24 And I also, I think it's important that the decision by a
25 regulatory body has no bearing on this cause of action or the

1 colorability of this claim, and the Texas State Securities
2 Board will tell you that. This is completely and utterly
3 irrelevant to your inquiry, Your Honor.

4 THE COURT: Okay. I overrule the relevance
5 objection. Certainly, it goes to colorability. It's some
6 evidence. It's some evidence. A regulatory body did not
7 choose to go forward --

8 MR. MCCLEARY: But that could be for --

9 THE COURT: -- on the complaint.

10 MR. MCCLEARY: That could be for reasons entirely
11 unrelated.

12 THE COURT: True, true. It's some evidence.

13 MR. MORRIS: That's speculation.

14 MR. MCCLEARY: Not for this.

15 THE COURT: But what is the authenticity objection?

16 MR. MCCLEARY: Well, there's no demonstration. I
17 don't believe they sponsored that with anyone.

18 THE COURT: Pardon? Say again?

19 MR. MCCLEARY: They didn't sponsor that with anyone.

20 MR. MORRIS: Your Honor, I actually -- if they really
21 put me to it, because I was reading the Rules of Evidence in
22 the wee hours of the morning, I am certain that there's an
23 exception for government documents and government statements
24 and government decisions.

25 MR. STANCIL: Your Honor, as to its authenticity, I

1 could produce a witness from Highland who said they got it, if
2 that's really what we're doing. That it's the letter, they
3 got it from the TSSB, if we're really doing authenticity.

4 MR. MCENTIRE: Well, first of all, it's hearsay and
5 there is no authenticity issue and it's irrelevant. I
6 understand --

7 MR. STANCIL: What is the authenticity issue, Mr.
8 McEntire?

9 THE COURT: I'm trying to understand the authenticity
10 issue. You think this is a --

11 MR. STANCIL: Do you think it's a real letter or a
12 fake letter?

13 MR. MCENTIRE: Well, first of all, I'm going to
14 address the Court and not you, okay?

15 Your Honor, --

16 THE COURT: Well, address by speaking in a --

17 MR. MCENTIRE: Yeah. Thank you.

18 THE COURT: Okay. I'm just saving the court reporter
19 from grief, okay?

20 MR. MCENTIRE: It is hearsay, and it is hearsay that
21 is calculated to be misrepresented or mischaracterized because
22 it's utter speculation as to the basis for their decision.
23 And if it's -- utter speculation is the basis of your
24 decision, it has no reason to come in. There's no --

25 THE COURT: What you're telling me, it goes to the

1 weight of the evidence. Okay?

2 MR. MCENTIRE: Your Honor, --

3 THE COURT: Okay. You're not telling me it's
4 inadmissible hearsay.

5 MR. MCENTIRE: Well, it is inadmissible hearsay.

6 MR. MORRIS: Can I just, for one second?

7 THE COURT: Please.

8 MR. MORRIS: Paragraph 34 of their motion, Your
9 Honor. Quote, "The Court also should be aware that the Texas
10 State Securities Board opened an investigation into the
11 subject matter of the insider tradings at issue, and this
12 investigation has not been closed. The continuing nature of
13 this investigation underscores HMIT's position that the claims
14 described in the attached adversary proceeding are plausible
15 and certainly far more than merely colorable."

16 They used the investigation to try to convince you that
17 their claims are colorable, and now we have a letter saying
18 there's nothing.

19 THE COURT: Okay. You want to explain that to me?

20 MR. MCENTIRE: Well, we put no evidence in, in this
21 proceeding --

22 THE COURT: You put what?

23 MR. MCENTIRE: We have put no evidence in, in this
24 proceeding, --

25 THE COURT: You filed a pleading under Rule 11

1 suggesting this was highly relevant, right?

2 MR. MCENTIRE: We filed a motion. Yes, we did.

3 THE COURT: Under Rule 11.

4 MR. MCENTIRE: Yes. Of course we did.

5 THE COURT: Okay.

6 MR. MCENTIRE: Of course we did.

7 THE COURT: Suggesting this Texas State Securities
8 Board complaint and investigation was highly relevant.

9 MR. MCENTIRE: The fact that it had opened an
10 investigation and was conducting an investigation is
11 irrelevant. Its decision to stop the investigation without
12 further elaboration or clarification, this is why it calls for
13 utter speculation.

14 MR. MORRIS: Your --

15 THE COURT: Okay. Do you have the hearsay exception
16 that applies? I'm looking at my evidence rules right now for
17 the government record or public record. Is it 803(8) that we
18 need to have addressed here?

19 MR. STANCIL: 803(8), Your Honor.

20 A VOICE: Yeah, public records.

21 THE COURT: Okay.

22 MR. STANCIL: Public record. Sets out --

23 THE COURT: Public records, 803(8), hearsay
24 exception. Moreover, you pled allegations suggesting this
25 investigation was really relevant. So I overrule your

1 objection, and so that means 33 is admitted.

2 (Debtors' Exhibit 33 is received into evidence.)

3 MR. MORRIS: Thank you, Your Honor. I continue.

4 Exhibit 36 --

5 MR. MCENTIRE: Which one was that?

6 MR. MORRIS: That was 33.

7 So now we're up to 36, Your Honor. I'm going to skip some
8 of these.

9 THE COURT: Okay.

10 MR. MORRIS: But this is just the Court's order
11 approving Mr. Seery's original --

12 THE COURT: I'm waiting for any objection for the
13 record. Do we have an objection, Mr. McCleary?

14 MR. MCCLEARY: 36, relevance, Your Honor.

15 MR. MORRIS: The relevance is that this Court
16 approved without objection Mr. Seery's compensation package in
17 an amount that included a base salary of \$150,000, which the
18 Claimant Purchasers and the independent director saw fit to
19 continue.

20 THE COURT: Objection overruled. It's admitted.

21 (Debtors' Exhibit 36 is received into evidence.)

22 MR. MORRIS: I think 38 may be on their list. Yeah,
23 38 is in as their 26, right? So that should be admitted.

24 THE COURT: Admitted.

25 (Debtors' Exhibit 38 is received into evidence.)

1 MR. MCCLEARY: If it's on our list, we agree.

2 THE COURT: Okay. It's admitted.

3 MR. MORRIS: That's it, Your Honor.

4 THE COURT: Okay. Do you all need a five-minute
5 break before we do closing arguments?

6 MR. MORRIS: I'd be grateful.

7 THE COURT: Okay.

8 MR. MCCLEARY: Yes, Your Honor. Thank you.

9 THE COURT: Will do.

10 THE CLERK: All rise

11 (A recess ensued from 5:49 p.m. to 5:57 p.m.)

12 THE CLERK: All rise.

13 THE COURT: All right. Please be seated.

14 We're back on the record in the Highland matter. Closing
15 arguments. Just for everyone's benefit, time -- you said 47
16 minutes and 23 minutes back several minutes ago, and then we
17 had all the housekeeping stuff. So I'm not sure if that's
18 where we are right now or if --

19 MR. MCENTIRE: I'm waiting for my monitor guy to be
20 here.

21 THE COURT: Okay. Okay.

22 So Caroline, is it still 47 and 23?

23 THE CLERK: Yes.

24 THE COURT: That's when we started the housekeeping
25 stuff.

1 MR. MCENTIRE: So 27 minutes?

2 THE COURT: Twenty-three.

3 THE CLERK: Twenty-three.

4 MR. MCENTIRE: Twenty-three? Can I get a five-minute
5 warning, please? Would you pull up the PowerPoint? And let's
6 go to Slide 39.

7 May I proceed, Your Honor?

8 THE COURT: You may.

9 CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

10 MR. MCENTIRE: So, before I go to the PowerPoint, I'd
11 like to kind of give a high-altitude overview of the situation
12 as I see it from the evidence perspective. We don't believe
13 this should have been an evidentiary hearing. Evidence has
14 been allowed.

15 We had a situation where, if you believe Mr. Dondero's
16 testimony as contrasted with Mr. Seery's testimony, you have a
17 credibility issue. So the Court is now conducting an inquiry
18 presumably on the basis in part on the credibility of
19 witnesses. And if you engage -- and if you want to indulge
20 that type of inquiry, the credibility of witnesses, without
21 allowing the Plaintiff in this case or the Movant in this case
22 to conduct some level of meaningful discovery, I would suggest
23 we have been deprived of due process, because without
24 documents to test Mr. Seery's statements, we are being
25 deprived of something that's basically very fundamental in our

1 judicial process.

2 And therefore, it underscores our argument and our
3 rationale why this shouldn't be an evidentiary hearing,
4 because I don't believe the Court can consider credibility
5 issues.

6 We have, on the one hand, unequivocal notes from Mr.
7 Dondero prepared contemporaneously that would suggest that
8 someone admitted to him and stated to him that they did in
9 fact obtain material nonpublic information. Mr. Seery says
10 that didn't happen. I specifically said, is that a lie? Yes,
11 it's not true. Well, that's a real problem, because that's
12 not the criteria that this Court should use for determining
13 whether we have a colorable claim. A colorable claim is
14 whether there is some possibility. It's something less, even
15 less stringent than a 12(b)(6) standard, plausibility. We
16 have that.

17 If you look at our pleadings, we have set forth all of the
18 facts we need, all the elements we need to establish a trade
19 on material inside information, nonpublic information. We
20 have evidence -- we have allegations that there was no due
21 diligence. And Farallon's lawyer stood up here -- well, I'm
22 not going to really address that today. But if there was any
23 day to address it, it was today. We have no evidence to
24 suggest they did do due diligence. Even Mr. Seery said, I
25 don't know what due diligence they did. We have evidence to

1 suggest that the only due diligence they did was to talk to
2 Mr. Seery, who has told -- who told them that this is very
3 valuable, don't -- this is a really good -- a good investment
4 here, it's a lot better than the 71 percent that's on our
5 disclosures.

6 And Judge, that evidence supports the colorability of the
7 claim. And if you go down the pathway of saying, well, I'm
8 not sure about Mr. Dondero because he had been held in
9 contempt two years ago, that's a real problem. That's a
10 problem for this Court. And I'm going to suggest that's why
11 this should have been a four-corners deliberation. Even
12 Farallon and Stonehill suggest this should be a four-corners
13 deliberation.

14 We have evidence now of no due diligence. We have
15 evidence before you that suggests that they did learn about
16 MGM before the announcement date. We have evidence that Mr.
17 Seery did trade on -- did -- was aware and received
18 information of material nonpublic information. And for him, a
19 CEO of his reputed stature, to sit here and say that was not
20 material and that was nonpublic defies common sense. It
21 defies reasonableness. That goes to credibility.

22 Mr. Dondero's notes speak volumes. The trades themselves
23 speak volumes. Mr. Dondero established that the interest --
24 return of interest here is to be less than one -- it's in the
25 one digits, and hedge funds trade in the 30, 40, 50 percent

1 range. Well, if that's the case, we have Farallon walking
2 away from a return on the exit financing of 13 percent, and
3 that wasn't good enough for him. How could six percent be
4 good enough for him? There's something missing here. There's
5 something not right.

6 And we're entitled to get our lawsuit on file and do some
7 discovery. And if they want to do a 12(b)(6), they do a
8 12(b)(6). If they want to do a Rule 56 after discovery, they
9 could do a Rule 56, all in this Court. But to address this
10 threshold issue now based upon this, what happened here today,
11 is a fundamental denial of due process.

12 I'd like to go to my pleadings.

13 Can you go to Slide 39, please?

14 First of all, let there be no doubt -- 39. Slide 39. 38.
15 38, please.

16 We can plead on information and belief. We have a right
17 to plead on information and belief. And the Fifth Circuit --
18 that is an acknowledged procedural practice in the Fifth
19 Circuit. And if some of our allegations are based upon
20 information and belief, so be it. The test here is not at
21 this stage. The test here is whether I have sufficient
22 factual allegations, whether on information and belief or
23 otherwise, to satisfy at most a plausibility standard. That's
24 it.

25 And if they want to challenge us at a later date, they

1 can. Rule 56. 12(b)(6). Or standing. But we have standing.
2 We have standing. We have standing under Delaware law. We're
3 a contingent beneficial interest that has standing under
4 Delaware law and all other law. All -- even Texas agrees that
5 a contingent interest has standing, an inchoate interest as
6 Mr. Seery described. A property interest. You have property
7 interest, you have standing.

8 THE COURT: Let me ask you.

9 And Caroline, turn the clock off when the Court
10 interrupts.

11 Just so you know, I mean, my analysis here is standing
12 first. Does your client have standing? Because we all know
13 that's a subject matter jurisdiction inquiry and I have to
14 explore that first. And then I've said many times the legal
15 standard question for colorability. That's kind of the second
16 place I go --

17 MR. MCENTIRE: Sure.

18 THE COURT: -- if I find there's standing. But can
19 you tell me, have there been appellate decisions that are
20 relevant today on standing? Contrary to what people may
21 expect, I don't follow every appellate decision from every
22 appeal in the Highland case. Okay? I wait until I get a
23 mandate --

24 MR. MCENTIRE: Sure.

25 THE COURT: -- to where I have to act on something.

1 MR. MCENTIRE: Sure.

2 THE COURT: So I feel like I've learned at some point
3 that some either district judge or Fifth Circuit said some
4 party didn't have standing. And I don't know if it was Hunter
5 Mountain or some other trust.

6 MR. MCENTIRE: Not --

7 THE COURT: And is there anything they said that, if
8 it wasn't Hunter Mountain, could be relevant here?

9 MR. MCENTIRE: I hope somebody kicks me if I'm wrong,
10 what I'm about to say. I'm not aware of any such issue --

11 THE COURT: Okay.

12 MR. MCENTIRE: -- dealing with Hunter Mountain
13 Investment Trust. I am not.

14 THE COURT: But any other party that might somehow
15 bear on this case?

16 MR. MORRIS: I apologize, Your Honor, I was
17 distracted. For which issue?

18 THE COURT: Standing. Because I was saying my first
19 thing I've got to tackle in ruling on this is standing of
20 Hunter Mountain. And I seem to remember learning that either
21 the district court on an appeal or the Fifth Circuit on some
22 appeal from Highland --

23 MR. MORRIS: Correct.

24 THE COURT: -- said some party didn't have standing.

25 MR. MORRIS: Correct.

1 THE COURT: And I don't know if it was --

2 MR. MORRIS: Dugaboy on the 2015.3, for sure, was a
3 Fifth Circuit standing decision.

4 THE COURT: Okay.

5 MR. MORRIS: I think there was a district court order
6 that preceded that.

7 THE COURT: Okay.

8 MR. MORRIS: That was the subject of the appeal.

9 THE COURT: The Dugaboy --

10 MR. MORRIS: 2015.3.

11 THE COURT: -- motion to require those --

12 MR. MORRIS: Yeah.

13 THE COURT: -- 2015.3 statements. Okay.

14 MR. MCENTIRE: So what we have here -- we can go back
15 on the clock if you'd like.

16 THE COURT: Yes, please.

17 MR. MCENTIRE: How much time do I have?

18 THE CLERK: You have just under 16 minutes.

19 MR. MCENTIRE: Sixteen? Okay. Give me a two-minute
20 warning. Sorry.

21 Your Honor, what we have here --

22 THE COURT: I don't think the U.S. Supreme Court
23 justices will give you a two-minute warning, but maybe I'm
24 wrong.

25 MR. MCENTIRE: Would you give me a two-minute

1 warning, please?

2 THE COURT: And I'm sure not a Supreme Court justice.

3 MR. MCENTIRE: What we have here is we have a 99.5
4 percent equity interest that has now been relegated to a
5 category of contingent interest, which we don't believe we
6 should be, and that's part of our declaratory judgment relief
7 we're asking for, which we have standing to do that at a
8 minimum because we want to be treated like a Class 9.

9 If they want to treat us like a Class 10, I have an
10 argument for that, and it's more than colorable. It's
11 persuasive. It's -- it is a winning argument. And that is we
12 do have standing in our individual capacity, and we have given
13 you a whole bunch of cases in our PowerPoint, or we will give
14 you a whole bunch of cases in our PowerPoint and in our
15 briefing to support that.

16 We also have given you Delaware case law that says we have
17 standing under Delaware trust law to bring a derivative action
18 against the Trustee. We have done everything appropriate
19 here.

20 We have the -- a demand upon Seery obviously would be
21 futile to prosecute the claim. A demand upon the Oversight
22 Board would be futile to make a demand on Muck and Jessup,
23 because they're Defendants and they're SPEs of Farallon and
24 Stonehill. And a demand upon Mr. Kirschner would be futile.
25 They suggest that there's an assignment of some sort, but that

1 would be a modification -- of the claims over to the
2 Litigation Trust, but that would be a modification of the
3 plan.

4 There's been no assignment of this claim, or these claims,
5 to the Litigation Trust Trustee. But even if there had been,
6 we pled that in the alternative as well. And it would be
7 futile to make a demand on Mr. Kirschner because he's suing
8 Hunter Mountain.

9 So we are an appropriate party. The only, then, issue
10 becomes whether or not we have standing under Delaware law to
11 bring a derivative action. And we have briefed that and we --
12 and that's included in our PowerPoint. The answer is yes.

13 I'd like to go briefly to Page -- next slide.

14 In our factual section, we set forth why this investment
15 would defy any kind of rational economic sense in the absence
16 of material nonpublic information as a factual allegation
17 supported by data, supported by dates, supported by time.

18 Based upon that, we also have allegations that are framed
19 around the admissions that Mr. Michael Linn provided. We have
20 allegations that he turned down a 30 or 40 percent premium in
21 our petition. We have allegations that they admitted that
22 they did no due diligence. We have allegations that they
23 admitted that they got material -- basically information about
24 MGM.

25 And again, it's not all about MGM. It's about the values

1 of all the portfolio companies. They want to make it about
2 MGM. If they do, we win. But it's much broader than that.

3 And we have standing to bring this claim because if we're
4 right Mr. Seery will have to return excess compensation and
5 the Claims Purchasers will have to disgorge. And that's going
6 to help not just Hunter Mountain. That's going to help other
7 creditors who haven't been paid yet.

8 So this is not exclusively -- Hunter Mountain would
9 substantially benefit. I'm not suggesting otherwise. But it
10 also benefits innocent stakeholders other than Hunter
11 Mountain. And that's why we are an appropriate party. We
12 don't have a conflict of interest to bring this. Everybody on
13 their side of the table does. There's no one else who could
14 bring this.

15 Your Honor, it's very clear when the trades took place.
16 We give dates and times. It's very clear that -- next slide,
17 40. It's very clear that their investment was over \$160
18 million. If it isn't, I don't see any denials. All we got
19 today was a lame statement from the lawyer saying we're not
20 here today to deny this.

21 MR. MORRIS: I'm offended.

22 THE COURT: He's offended by being called lame.

23 MR. MCENTIRE: Not you lame personally.

24 MR. MORRIS: Oh, thanks for the clarification.

25 THE COURT: Okay.

1 MR. MCENTIRE: A lame statement by you. In fact, it
2 wasn't even you, so --

3 In any event, Your Honor, --

4 MR. MORRIS: I've been called worse.

5 MR. MCENTIRE: -- the point being is that there was
6 no -- there's not -- never been an attempt to deny the factual
7 allegations in our pleadings dealing with Farallon and
8 Stonehill. None at all.

9 And so -- not that that's ultimately relevant, because
10 that's an evidentiary issue outside of the four corners of our
11 pleading, but it does -- it just stands out and screams. It
12 screams. And it screams volumes.

13 So right, now based upon our pleadings -- we even plead in
14 Paragraph 42, Paragraph 42, exactly what they invested. This
15 is what you have before you. No one has disputed it. It's in
16 the four corners of our pleading. We've got dates, times,
17 amounts. We have admissions to Mr. -- well, we have
18 admissions from Michael Linn, Paragraph 47. We have -- we do
19 plead upon information and belief the *quid pro quo* on
20 compensation. And frankly, the evidence here today is that
21 the compensation is excessive. And the experts will further
22 confirm that it is excessive. \$1.8 million with a bonus
23 program in place to pay him another \$8, \$9, \$10 million, when
24 in fact the risks don't exist and there's no uncertainty and
25 therefore the percentages make no sense. That's --

1 THE COURT: What do you mean, the risks don't exist
2 and there is no uncertainty?

3 MR. MCENTIRE: If Mr. Seery is telling Farallon and
4 Stonehill don't sell, this could be really valuable, it's
5 inconsistent with the notion that the schedule and the
6 performance -- performance schedule in the compensation
7 agreement is rationally justified. Because if it's really
8 certain or it's likely you're going to make a lot of money,
9 there's no reason to give him six percent to incentivize him
10 because it's already a done deal.

11 And the whole point here is that I scratch your back, you
12 scratch mine. They make a lot of money on their deal and he
13 gets a lot of money on the backside post-effective date.
14 Post-effective date.

15 Next slide, 49.

16 It would have been impossible, based upon the publicly-
17 available information in Paragraph 49, impossible for
18 Stonehill and Farallon, in the absence of inside information,
19 to forecast any significant profit when they made their
20 investments. It's not possible. Because given the amount of
21 the Claim 8 and Claim 9 claims -- they actually invested in
22 Claim 9 with a zero return. It's projected to be a negative
23 result. On Claim 8, even if you allocate their entire
24 purchase price to Claim 8, they're going to get something less
25 than a 10 percent return paid out over a couple years. Nobody

1 invests that kind of money in an unsecured creditor asset that
2 hasn't been collateralized. There's something wrong here.

3 And we have a right to have our day in court to show that.
4 We have our right to take a true deposition of Mr. Seery with
5 documents. We have a right to take Farallon and Stonehill's
6 deposition with documents. And we have tried to get
7 information and we have been turned down at every turn. We
8 have a right to have our day in court, Your Honor.

9 We have allegations of excessive compensation. I know Mr.
10 Morris suggested the other day that we didn't have any such
11 allegations. They're here. The whole idea here is that Mr.
12 Seery would really profit on the backside. And, you know, he
13 actually testified, I believe -- I won't do that because
14 that's outside the four corners of our pleading. But the --
15 there is a *quid pro quo*. We allege there's a *quid pro quo*
16 upon information and belief. And we also allege willfully and
17 knowingly, we allege conduct that falls clearly within the
18 exceptions.

19 None of this -- none of these claims were released. Mr.
20 Seery's not an exculpated party in the context of how we --
21 proposing to sue him here. None of the protected parties, to
22 the extent that Muck and Jessup claim to be protected parties,
23 they're not protected here, because all of the claims we're
24 making are on the basis of willful misconduct and bad faith,
25 which are the standards that they used and incorporated in the

1 plan and in the gatekeeper provisions.

2 How much time do I have?

3 THE CLERK: Right now you have --

4 MR. MCENTIRE: Thirty seconds?

5 THE CLERK: -- seven minutes left.

6 MR. MCENTIRE: Okay. Next slide, please.

7 Mr. Seery has admitted that he has a duty to avoid self-
8 dealing. We allege that he did self-deal. There is clearly a
9 relationship. We have a right to explore the depths of that
10 relationship. Well, already we know there is a relationship.
11 We have investments in charities, contributions to charities,
12 meet-and-greets, congratulatory emails. It's not as if
13 Farallon and Stonehill are strangers, or Mr. Seery's a
14 stranger to them. It's not like that at all. They contacted
15 him to get involved.

16 And by placing -- by acquiring these claims -- and by the
17 way, this is the most significant trading activity in your
18 bankruptcy, in this bankruptcy proceeding. Post-confirmation.
19 Post-confirmation. By acquiring these claims, they were
20 guaranteed to be put onto the Oversight Board. By acquiring
21 these claims, they were guaranteed to be put in a position --
22 into a position where they would adjust, monitor, compensate
23 Mr. Seery. That's the terms of the Claimant Trust. Those are
24 the terms.

25 And it's interesting, because one of the amendments that's

1 in evidence to the plan, I think it's either the third or the
2 fourth amendment, that came out of nowhere right before
3 confirmation, they changed the structure of the Claimant Trust
4 to go off a standard base pay and added in a bonus structure
5 at the last minute. That's evidence.

6 Mr. Seery has acknowledged, we have alleged he had duties
7 to avoid self-dealing, to always look out for the best
8 interests of the estate, to avoid conflicts of interest.
9 Well, here, to the extent that there is a *quid pro quo*, he is
10 self-dealing and he has injured the Reorganized Debtor and
11 he's injured the Claimant Trust, because that's just less
12 money.

13 And we also allege, Your Honor, it's also an allegation
14 that --

15 THE COURT: And let me ask, the sole injury here is
16 compensation was more than it would have been if not for the
17 sale of the claims to Farallon and Stonehill --

18 MR. MCENTIRE: That's one of the injuries.

19 THE COURT: -- and therefore less money at the end of
20 the day for creditors and ultimately Hunter Mountain?

21 MR. MCENTIRE: Yes. And we also allege that, as part
22 of this arrangement, conspiracy, as we allege conspiracy, we
23 have seen over \$200 million flow out of the coffers of this
24 estate in the form of --

25 THE COURT: What do you mean, as a result of the

1 alleged conspiracy? What do you mean?

2 MR. MCENTIRE: A delay, a postponement, making long-
3 term payouts, keeping the litigation alive. They actually
4 suggested to Mr. Linn, don't settle these claims, don't sell
5 out, because this is asset-backed, and we also have claims.
6 And so --

7 THE COURT: Wait, what? Say again?

8 MR. MCENTIRE: One of the things that Mr. Linn told
9 Mr. Dondero, according to Mr. Dondero's notes, is we have --
10 this is very valuable, we're buying assets and we're buying
11 into claims, the litigation claims that are being asserted in
12 this bankruptcy proceeding.

13 THE COURT: Yes. Got it.

14 MR. MCENTIRE: Yeah. And so the whole idea here is,
15 is that people are funneling money in and taking money out of
16 the coffers of this estate to fuel future litigation in order
17 to have a bigger payday at the end for Class 8 and Class 9.
18 That's exactly what those notes suggest.

19 THE COURT: I don't understand the correlation. What
20 correlation are you making? Because of the claims being
21 purchased, what?

22 MR. MCENTIRE: The claims being purchased allow Muck
23 and Jessup to be in a position to award compensation. We've
24 talked about that.

25 THE COURT: I got that.

1 MR. MCENTIRE: That's one type of injury. The other
2 injury is, and we have alleged it, is the fact that these
3 claims become very valuable not only because they're asset-
4 backed but because also the litigation claims that Mr.
5 Kirschner is prosecuting.

6 THE COURT: But how does the purchase of the claims
7 impact that? They were allowed claims at certain amounts
8 before, and after the purchase they're still allowed claims.

9 MR. MCENTIRE: Mr. Seery is telling them that,
10 basically, this is our plan, this is what we're doing, this is
11 --

12 THE COURT: That was the plan of reorganization that
13 was confirmed by the Court. I don't get how something
14 changed. I'm trying to get to what are the injuries that your
15 client has suffered. And I get the compensation argument
16 you're making, but I don't get the rest of it.

17 MR. MCENTIRE: If Mr. Dondero had been in a position,
18 or one of his entities had been in a position, or even Hunter
19 Mountain, and I'm not sure why Hunter Mountain -- be in a
20 position to have acquired the claims, then we would -- this
21 bankruptcy wouldn't even be in existence anymore. It'd be
22 over. All creditors would be paid. It would be done. Be
23 over. And that is an allegation we have made --

24 THE COURT: How do I know that?

25 MR. MCENTIRE: Because all the creditors would have

1 been paid off.

2 THE COURT: How do I know, if he would have purchased
3 the claims, that's what would have happened?

4 MR. MCENTIRE: Well, that's what he testified to
5 today here. I don't want to get off on a rabbit trail.

6 THE COURT: I'm trying to understand the injury, --

7 MR. MCENTIRE: Sure. I understand.

8 THE COURT: -- because that's part of my analysis
9 here.

10 MR. MCENTIRE: The focus, the focus is on the
11 compensation. And once they aid and abet, once they aid and
12 abet a breach of fiduciary duties, they are subject to
13 disgorgement, and disgorgement of all of their ill-gotten
14 gains. And the ill-gotten gains are now well over --
15 approaching over \$100,000 million.

16 THE COURT: How do you get to that number?

17 MR. MCENTIRE: Easily. We know how much they
18 purchased, which has never been denied. We know how much has
19 been distributed to Class 8. And we know what percentage of
20 Class 8 they own. They own about 95 percent of all Class 8
21 claims. So if \$270,000 million has been distributed to Class
22 8, they got 90 percent of that, 95 percent of it has already
23 gone to them, Farallon and Stonehill.

24 THE COURT: But it would have gone to the sellers of
25 the claims as well. I'm trying to make the connection.

1 MR. MCENTIRE: That's not the injury. The injury is
2 what -- that is a consequence of their conduct. The injury is
3 the compensation. All right? That's a distinct injury. They
4 are subject to disgorgement as a consequence because they have
5 done wrong, and the law should not tolerate -- should not
6 tolerate and allow wrongdoers to get away. And that's where
7 the unjust enrichment and disgorge --

8 THE COURT: And what are your best cases for that,
9 that they would have to disgorge --

10 MR. MCENTIRE: We have cited --

11 THE COURT: -- the Purchasers would have to disgorge
12 --

13 MR. MCENTIRE: We have cited cases in our brief.

14 THE COURT: I'm asking you now to --

15 MR. MCENTIRE: I don't have them in front of me right
16 this second. But an aider and abettor --

17 THE COURT: The *CVC* case, is that your best case?

18 MR. MCENTIRE: I don't have the cases in front of me.
19 I can say this, that the case law is robust, and I can supply
20 you --

21 THE COURT: It is not robust. That's why I'm asking
22 you to zero in. I read your *CVC* case from the Third Circuit,
23 and I'm wondering, is that your strongest case?

24 MR. MCENTIRE: No. I think we -- I think we have a
25 lot of strong cases. I'm not sure that it is the strongest.

1 THE COURT: Tell me which ones, so I --

2 MR. MCENTIRE: Ma'am, I just said I don't have it in
3 front of me. If you'll look --

4 THE COURT: Okay. Well, this is closing argument
5 where you present law in support of your position.

6 MR. MCENTIRE: Well, actually, I'm arguing facts
7 right now. But Your Honor, what I want to tell you is if
8 you'd like me to submit a letter brief on that, I will.

9 THE COURT: No.

10 MR. MCENTIRE: Okay. Then I won't. It's in my
11 brief. All of our authorities are in the brief.

12 In conclusion, --

13 THE COURT: Okay. So that was the CVC case from the
14 Third Circuit which dealt with an insider who purchased
15 claims, statutory insider, a board member, a 28-percent equity
16 owner, who purchased claims during the case to be in a
17 position to file a competing plan and didn't disclose to the
18 board or file a 3001(e) notice. Okay. There was -- claims
19 shouldn't be allowed at more than what the purchaser paid for
20 it.

21 MR. MCENTIRE: Okay.

22 THE COURT: Okay. I'm asking you, is that your best
23 case? Because you also cited *Adelphia*, which seemed kind of
24 factually off the mark. And so I really --

25 MR. MCENTIRE: I -- I'm sorry, --

1 THE COURT: I need to know, because I've made clear
2 from the beginning, --

3 MR. MCENTIRE: Yes.

4 THE COURT: -- I'm struggling with how is there a
5 cause of action related to claims trading.

6 MR. MCENTIRE: (chuckles)

7 THE COURT: I don't know why you're giggling. This
8 is --

9 MR. MCENTIRE: No, I'm not. But --

10 THE COURT: -- serious stuff. Okay?

11 MR. MCENTIRE: Agreed. Agreed.

12 THE COURT: A bankruptcy estate is being charged ka-
13 ching, ka-ching -- not bankruptcy estate -- the post-
14 confirmation trust. Ka-ching, ka-ching, ka-ching. So this is
15 serious stuff.

16 MR. MCENTIRE: Agreed.

17 THE COURT: I need to, you know, colorable claim.

18 MR. MCENTIRE: Agreed.

19 THE COURT: Colorable claim.

20 MR. MCENTIRE: Agreed.

21 THE COURT: Even if plausibility is the standard,
22 which I've expressed my doubt about that, how do you have a
23 plausible claim? What is your best case?

24 MR. MCENTIRE: Okay. This --

25 THE COURT: Just to recap what I'm focused on,

1 purchaser and seller, okay? I can see where breach of
2 contract, maybe some sort of torts between those two. Okay.
3 I can see where the U.S. Trustee, the SEC, I don't know, the
4 Texas State Securities Board, they might get concerned about
5 allegations of insider trading and there might be a regulatory
6 action. But the estate? Again, the post-confirmation trust
7 --

8 MR. MCENTIRE: Okay.

9 THE COURT: -- and a contingent beneficiary. I'm
10 trying to understand what is the best legal authority that
11 might support a colorable claim. And we talked about the CVC
12 case and *Adelphia*. I'm trying to figure out what are other
13 cases you think I should really hone in on to understand this.

14 MR. MCENTIRE: All right. At the very beginning this
15 morning, during my opening statement, I had said this is not
16 your typical claims-handling case, because I recall from our
17 last conference you asked that question a couple of times.
18 This is not your typical claims-handling case. And it's not a
19 typical claims-handling case because we have a fiduciary that
20 we claim breached his duties that were owed to the estate.
21 And he self-dealt. And he -- this has nothing to do with the
22 plan. This has something to do with what Mr. Seery did
23 outside the corners of the plan. Perhaps he used the plan
24 expediently. He self-dealt.

25 That's why this is not just between a seller and a buyer

1 of a claim. That's number one.

2 We have been denied an opportunity to discover the
3 communications between the sellers and the buyers, and my
4 guess is we have big boy agreements that prevent the sellers
5 from ever coming back at anybody for fraud. My expectation,
6 that's the case. We should have a right to go explore that.
7 So that's why they're not here.

8 THE COURT: Why? I mean, what would that tell you?
9 What would that tell you?

10 MR. MCENTIRE: That --

11 THE COURT: If there's a big boy agreement, if
12 there's not, what --

13 MR. MCENTIRE: It would tell us --

14 THE COURT: -- consequence would that have for this
15 --

16 MR. MCENTIRE: It would tell us --

17 THE COURT: -- proposed lawsuit?

18 MR. MCENTIRE: It would answer Mr. Morris's question
19 that he's raised several times, this is the seller's issue,
20 this is not -- this is not the Hunter Mountain's issue. It is
21 Hunter Mountain's issue. Hunter Mountain as an equity
22 interest-holder should be in a position to be certified as a
23 Class 9 beneficiary now pursuant to our declaratory judgment
24 action. That's number one.

25 Number two. As a contingent beneficiary, it is entitled

1 to protect its interests and bring suits if it sees that
2 something has happened that is incorrect and is a tort
3 involving the Reorganized Debtor and the Claimant Trust. That
4 is the nature and the essence of our claim.

5 And as a consequence, the aiders and abettors should not
6 be allowed to walk away unharmed. They should be required to
7 disgorge their ill-gotten profits. And that calculation is
8 easily done, as I've just demonstrated.

9 Your Honor, that's all I have. Thank you very much.

10 THE COURT: Thank you.

11 MR. MCENTIRE: And we talked -- we'd need an
12 opportunity to argue on the issue of experts, because --
13 whether you're just going to take it under advisement, I'm not
14 sure how you're going to handle that.

15 THE COURT: I'm going to read the pleadings and then
16 I'm going to let you all know are we coming back for another
17 day.

18 MR. MCENTIRE: Thank you.

19 THE COURT: All right. Who is making the closing
20 argument -- do we have three closing arguments?

21 MR. STANCIL: Yes.

22 MR. MCILWAIN: We're going to do it in reverse order.

23 MR. MORRIS: Reverse order in.

24 THE COURT: Okay. Reverse order of --

25 MR. STANCIL: Keep it interesting.

1 MR. MORRIS: I think I was last on the opening.

2 THE COURT: -- importance?

3 (Laughter.)

4 THE COURT: No. Just kidding. Just kidding.

5 MR. MORRIS: We're assuming you remember what the
6 original order was.

7 MR. STANCIL: Yeah, right, right.

8 MR. MORRIS: It was so many hours ago.

9 THE COURT: Okay. Oh, so many hours ago.

10 MR. MCILWAIN: I think I was referred to earlier as
11 the lame lawyer.

12 THE COURT: Oh, you were. I think --

13 MR. MCILWAIN: So I'll start. I think --

14 THE COURT: I think you --

15 MR. MCILWAIN: Or maybe it was the lame argument,
16 whatever. Whatever.

17 THE COURT: I think you were the lame one.

18 CLOSING ARGUMENT ON BEHALF OF THE CLAIM PURCHASERS

19 MR. MCILWAIN: Your Honor, Brent McIlwain here for
20 the Claim Purchasers.

21 Let me start, I guess, by saying I understand now why
22 Hunter Mountain did not want to put on evidence, because the
23 evidence that they put on, frankly, made their case much
24 worse.

25 As we argued or we stated in the opening statement, our

1 position is that you can look within the four corners of this
2 document and determine that there is no plausible or colorable
3 claim. What the evidence showed is that Mr. Dondero allegedly
4 had a call with one -- with Farallon, not with Stonehill, with
5 Farallon, Farallon wouldn't tell him what they paid, Farallon
6 did not accept an offer of 130 or 140 percent of whatever they
7 paid for the claim, and he thinks they did no due diligence,
8 right? He had nothing in his notes about MGM. So he can say
9 that he thought that they were positive because of MGM, but
10 it's certainly not -- I don't think the Court should take that
11 evidence with any credibility.

12 But interestingly, what Mr. Dondero says is, well, how do
13 you know how much they paid for these claims? He goes, well,
14 there was a market for the claims, right? They were all
15 trading at 50 or 60 cents. But yet no one would ever buy
16 these claims without any due diligence because the projections
17 in the plan indicate that they wouldn't -- they wouldn't get a
18 return.

19 Well, if there's a market for the claims and he's willing
20 to pay 30 or 40 percent more than whatever someone purchased,
21 certainly there is a market for the claims. And he is the
22 only one, frankly, that had inside information. That's why he
23 was willing to maybe pay more.

24 Or, alternatively, the case that you were describing
25 before, Mr. Dondero maybe wanted to buy the claims so he could

1 control the case, right, so he could dismiss any litigation
2 that was pending against himself so he could avoid the ire of
3 the estate that is aimed at him.

4 It also -- the Court's inquiry as to what the injury is I
5 think is precisely on point. The only injury offered at this
6 point really is that somehow my client's agreed-to higher
7 compensation that is reasonable or appropriate in return for
8 some inside information on claims that were allegedly trading
9 at 50 or 60 cents in any instance. And what the evidence
10 showed is that, one, Mr. Dondero never had any information
11 about that, about the compensation that Seery is receiving
12 when this complaint was filed, when this motion for leave was
13 filed.

14 And so if you judge the complaint within the four corners,
15 there is no -- there is no *quid pro quo*, right? Because he
16 says, well, there's obviously something up here because they
17 wouldn't have bought these claims without due diligence, and
18 they must have agreed to higher compensation, and that's why
19 it all happened. And if we throw all this out here, then
20 we'll get to do the discovery that we wanted to do.

21 Importantly, if you look at his notes, right, the first
22 thing that's written down is discovery to follow, because
23 that's how he operates. That's how a serial litigator
24 operates. Discovery to follow so that I can pay you back for
25 not selling your claim to me. Right? So I can't control the

1 world, so I can't control this case, you're going to pay. And
2 we're all paying. Every one of us here. Right? There's 15
3 lawyers in the courtroom and probably 10 on the phone, right?
4 We're all paying.

5 And so when Mr. McEntire says I'm not getting my day in
6 court, we've had an entire day in court. We've had three
7 hearings to decide what this hearing is going to be. And he's
8 gotten more than his day in court for, frankly, what is word
9 salad. This complaint doesn't pass any test, whether it's
10 12(b)(6) or under the *Barton* Doctrine. It's simply
11 allegations that are thrown out there, and they're saying, so
12 that we can do more discovery to determine if we actually have
13 allegations. Because they want to continue to harass people,
14 they want to continue to be a thorn in everyone's side, so
15 that perhaps they can avoid further litigation against Mr.
16 Dondero or they can convince somebody to settle with Mr.
17 Dondero.

18 It doesn't make any sense, Your Honor, and this is exactly
19 why there is a gatekeeper provision, right. That's why the
20 Court imposed this.

21 And you ask yourself, why would someone sell these claims?
22 Obviously, the sellers of the claims have not shown up.
23 Whether they're big boy, it doesn't matter, because the Court
24 and this estate had nothing to do with those sales. But they
25 haven't shown back up. I can -- I can venture a guess why, if

1 I was involved with Mr. Dondero, I would sell my claim, right?
2 Because I wouldn't have to be here. And that's exactly why
3 the Court should not authorize this complaint to be filed and
4 the gatekeeper provision of the order should prevent it. And
5 frankly, this should be shut down and we should not have to
6 have continued litigation over experts, or anything else, for
7 that matter. And frankly, we should just be able to go on and
8 let Mr. Seery do his job.

9 Because I think the evidence was pretty clear that his
10 compensation is reasonable and it was in line, frankly, with
11 what he was making before. And candidly -- and maybe it's
12 because Mr. McEntire is not involved in bankruptcy cases, but
13 this is similar compensation that I see in numerous cases, and
14 it's tiered to incentivize Mr. Seery to do his job, and he's
15 doing his job.

16 So, with that, Your Honor, I'll cede the rest of the time
17 to the other parties.

18 THE COURT: Okay. Thank you.

19 CLOSING ARGUMENT ON BEHALF OF JAMES P. SEERY, JR.

20 MR. STANCIL: Thank you, Your Honor. I'm going to
21 focus -- and I'm going to put my little clock up so Mr. Morris
22 doesn't, you know, give me the hook here.

23 THE COURT: Okay.

24 MR. STANCIL: But first --

25 THE COURT: Next time we're all here, maybe I'll have

1 one of those red, what do you call them, the buzzer.

2 MR. STANCIL: Oh, the big light?

3 THE COURT: The red light.

4 MR. STANCIL: We used to joke that the judge I
5 clerked for wished he had a trapdoor and he could just pull
6 the lever when it was done.

7 THE COURT: Okay.

8 (Laughter.)

9 MR. STANCIL: Maybe I shouldn't have put that in your
10 head.

11 THE COURT: Who was that? Are we going to say who
12 that was?

13 MR. STANCIL: So Your Honor, I'm going to try to set
14 the legal framework. I'm going to ask you -- and I think we
15 have our -- we have the deck. It's the little -- if we could
16 put that up and start on Slide 2.

17 I'd like to address what standard applies, and then I'd
18 like to spend a few minutes asking Your Honor again not only
19 to rule on multiple alternative grounds, but also I'd like to
20 walk through what if you did this on a pure 12(b)(6), because
21 it's going to collapse.

22 So, well, we'll just jump in. I said at the beginning
23 that we know that the question here is not what does the word
24 colorable mean in isolation. We wouldn't do that in any
25 context. We would always look and see what the operative

1 language here is in the Court's confirmation order. So the
2 question is, what did the Court mean, it must represent a
3 colorable claim?

4 So we mentioned before Paragraph 80 of the confirmation
5 order. That cites *Barton*. It cites the vexatious litigant
6 cases. I've not heard one word from Mr. McEntire answering
7 how it can be that we're here on a sub-12(b)(6) standard he
8 now says when the Court articulated this legal authority and
9 this legal basis in the confirmation order. If he believed
10 that, the time to make that argument was on the confirmation
11 appeal, and that's over.

12 But let me then say, how did we get, how did the Court get
13 to Paragraph 80? Well, that came after a series of factual
14 findings in the confirmation order -- in fact, actually, Josh,
15 do you have the hard copy of this?

16 MR. LEVY: Yeah.

17 MR. STANCIL: If I could hand that to the Court.

18 May I approach, Your Honor?

19 THE COURT: You may. Thanks.

20 MR. STANCIL: And I don't propose to go through every
21 slide, Your Honor.

22 THE COURT: Okay.

23 MR. STANCIL: But if you could turn to Slide #5.

24 This is Paragraph 77 of the Court's confirmation order.

25 Factual support for gatekeeper provision.

1 MR. MCENTIRE: Excuse me. May I have a copy? I
2 can't see it.

3 THE COURT: Oh.

4 MR. LEVY: Oh, yeah, sure, sure.

5 MR. STANCIL: And can we get a copy of yours as well,
6 --

7 MR. MCENTIRE: Sure.

8 MR. STANCIL: -- while we're at it? Thanks.

9 The facts supporting the need for the gatekeeper provision
10 are as follows. I will not read them all, but if you scroll
11 about eight lines down, it says, During the last several
12 months, Mr. Dondero and the Dondero-related entities have
13 harassed the Debtor, which has resulted in further
14 substantial, costly, and time-consuming litigation for the
15 Debtor. And then there are six separate enumerated examples
16 of that.

17 Paragraph 78 on the next slide. Findings regarding
18 Dondero postpetition litigation. The Bankruptcy Court finds
19 that the Dondero postpetition litigation was a result of Mr.
20 Dondero failing to obtain creditor support for his plan
21 proposal and consistent with his comments, as set forth in Mr.
22 Seery's credible testimony, that if Mr. Dondero's plan
23 proposal was not accepted he would, quote, burn down the
24 place.

25 Next slide. This is Paragraph 79. Necessity of the

1 gatekeeper provision. If you would just skim to the bottom of
2 that first column, it says, Approval of the gatekeeper
3 provision will prevent baseless litigation designed merely to
4 harass the post-confirmation entities charged with monetizing
5 the Debtors' assets for the benefit of its economic
6 constituents, will avoid abuse of the court system and preempt
7 the use of judicial time that properly could be used to
8 consider the meritorious claims of other litigants.

9 And then came Paragraph 80, which we've just discussed.
10 With respect, Your Honor, the question is, what is the meaning
11 of Paragraph 80? And in context, following those paragraphs
12 regarding vexatious litigation and abuse of litigation, it is
13 simply implausible to suggest that colorability is a sub-
14 12(b)(6) standard.

15 And that is Mr. McEntire's contention today, that the
16 gatekeeping order is actually lower than the threshold that
17 every other litigant faces. Everyone else has to file a
18 claim, pass a 12(b)(6), and on they go to get to discovery.
19 Mr. McEntire believes that the gatekeeping order imposes less
20 than that on him, and then he's treated just like everybody
21 else. It makes no sense whatsoever.

22 So I'll skip Slides 8 and 9, Your Honor, but that's where
23 the Fifth Circuit described the gatekeeping orders, affirmed
24 them in relevant part, citing *Barton*. There is no mystery
25 here.

1 If you could flip, Your Honor, to Slide 10 very briefly.
2 We've talked about this case a little bit in one of our status
3 hearings, *In re Vistacare Group*. This is the leading case
4 that describes what it is that one does under a *Barton*
5 analysis, and it says that the trustee must make a -- pardon
6 me -- a party seeking leave to sue a trustee must make a *prima*
7 *facie* case against the trustee, showing that its claim is not
8 without foundation. A *prima facie* case is more than a
9 12(b)(6).

10 And I would direct Your Honor to the language in the third
11 bullet. It involves a greater degree of flexibility than a
12 Rule 12(b)(6) motion to dismiss because the bankruptcy court,
13 which, given its familiarity with the underlying facts and the
14 parties, is uniquely situated to determine whether a claim
15 against the trustee has merit. Boy howdy, are we -- I'm
16 sorry. My kids are going to tease me for that.

17 But this -- no case has ever proved the wisdom of that
18 statement, Your Honor. We are here, and the Court is all too
19 familiar with the facts and the parties of this case. And
20 we're not here on an adversary proceeding. We're here on a
21 contested matter. And Your Honor has the authority on any
22 contested matter to take evidence, and a broad, broad
23 discretion as to what evidence is appropriate to meet that
24 standard.

25 So we have laid out briefly in Slide 11 what -- why we

1 believe that -- or how we believe that the *prima facie* showing
2 would work. And in short -- and maybe this will help us going
3 forward -- we believe that if they make -- if a party seeking
4 relief under the gatekeeping order says things, we have the
5 right to rebut them, like in a burden-shifting or a burden of
6 production -- pardon me -- analysis. So you can say that the
7 sun rises in the west, but we can bring in evidence to say it
8 doesn't, it rises in the east. And that's the plausibility
9 threshold.

10 And here, and if Your Honor would flip to the next slide,
11 I'm not sure it's entirely fair to say, even after they have
12 purported to withdraw their evidence, that they've really done
13 so. And we disagreed with Mr. McEntire, and advised him of
14 such leading up to this hearing, that we do not agree that his
15 redactions fully excise all of the evidentiary assertions from
16 his motion.

17 And I'll just pick one example here on Slide 12. On the
18 left is Paragraph 32 of the motion for leave prior to the
19 purported withdrawal. On the right is Paragraph 32 after the
20 withdrawal. Your Honor will see all they've withdrawn are the
21 citations. It's verbatim. It's the same allegations. And
22 they have argued various facts and put them in evidence. So
23 even if it were true, and it's not, but even if it were true
24 that all you get here is a 12(b)(6) ruling in the ordinary
25 case if you put no evidence in dispute, they forfeited that

1 right by putting these facts and evidence in dispute in their
2 motion.

3 The fact that they have withdrawn evidentiary support for
4 their evidentiary assertions does not relieve them of the
5 reality that they have made all sorts of factual arguments in
6 their motion for leave, and as a contested matter we have the
7 right to address it.

8 I'm proposing, Your Honor, unless you have questions on
9 the cases on 13, 14, those are the cases where we have
10 described the hearings that have been held under *Vistacare* and
11 *Foster*, and I know more about the down-in-the-weeds of *Foster*
12 than I ever cared to, but I don't want to repeat what's in our
13 briefs.

14 If Your Honor is willing to flip to Page 15, this is an
15 argument I've alluded to briefly, but boy, we don't hear -- we
16 have not heard a single thing as to what function the
17 gatekeeper serves, particularly in context of Your Honor's
18 factual findings in the confirmation order, if all it means is
19 12(b)(6) or lower. It just, it's an unanswerable point that
20 they just persist in ignoring.

21 But I'd like to address very briefly that third bullet,
22 because at various times and in their brief they have cited,
23 Hunter Mountain has cited, down here we call it *Louisiana*
24 *World*, I think in the Second Circuit we call it *STN*, but this
25 UCC derivative standing. There are, in fact, two elements one

1 has to pass for that, and that's a different context. The
2 first is colorability as it's used in that context, and that
3 is often a 12(b)(6) standard in that context. But still to
4 have standing, to bring that claim on behalf of the estate,
5 you have to show a cost-benefit analysis. As we've heard
6 today, we've probably spent more in legal fees today, or over
7 the last three months, than the purportedly excessive
8 compensation to Mr. Seery. And so I would respectfully
9 submit, if we were here on a *Louisiana World* or *STN* hearing,
10 this would be an open-and-shut case just as well.

11 So if I could, Your Honor, if you are willing to jump
12 ahead to Slide 17, I'd like to ask you -- and I do want to
13 address the standing jurisdictional question a little bit.

14 THE COURT: Okay.

15 MR. STANCIL: Not to get into the weeds of standing,
16 because I think we have briefed that out the wazoo in our
17 papers, and I read this morning -- I think it was this morning
18 -- from the Claimant Trust Agreement, which says they're not a
19 beneficial interest.

20 But my understanding is that Article III standing, whether
21 there is a theoretical injury in any way, that is -- that goes
22 to Your Honor's subject matter jurisdiction under Article III,
23 but that is not true of statutory standing under Delaware law
24 or prudential standing. Those are -- those go to basically
25 whether they state a claim.

1 So, Your Honor, I believe, can -- and I've confessed to my
2 colleague that the only way I remember this is I screwed it up
3 really, really badly when I was clerking years ago -- but I
4 believe Your Honor can, and in this case should, rule on the
5 standing ground in the alternative. Not on the Article III.
6 Article III is binary. They either have it or they don't.
7 But on the statutory standing, you can say -- I think you can
8 hold that they do not have standing under Delaware law to
9 pursue the claim, but even if they do have standing, and then
10 reach the remainder.

11 And we know we're headed for appeal. We've heard --
12 pretty much two-thirds of the time this morning has been
13 laying the groundwork for an appeal. And we would only like
14 -- we would like to make sure that we give the Fifth Circuit a
15 fulsome record.

16 So I would like to ask Your Honor to flip to Page 19. And
17 this is really the end of, I think, what we need to do. So,
18 Your Honor, what if we were here just on 12(b)(6)? So we've
19 got a *quid*, we've got a *pro*, we've got a *quo*. They fail at
20 each turn. Let me spend most of my time on the *quid*. I'll
21 let the documents of which the Court can take judicial notice
22 speak for themselves. I will let the bare-bones nature of the
23 assertion -- and it's okay to put in a complaint something on
24 information and belief, but you still have to pass *Iqbal* and
25 *Twombly*. I can't say upon information and belief that I was

1 denied a starting position on the Knicks, right? I would like
2 to believe that's the case, but it still has to be a plausible
3 allegation.

4 Let's look at this chart. And this chart is taken right
5 out of our brief. These are their numbers. This is at the
6 bottom. And I want to -- I would like to take head-on this
7 proposition that this is not a rational investment on their
8 numbers.

9 So let's take the Stonehill purchase of Redeemer. They
10 paid \$78 million to earn a projected profit, according to the
11 November 30 disclosure statement, of \$19.71 million. By my
12 arithmetic, that is a return of 25.27 percent. Even by Mr.
13 Dondero's lights, that's a pretty good return.

14 I'm going to come back to why that's not the end of the
15 return, but let's look at the Farallon purchase of Acis.
16 Spent \$8 million. Projected profit, \$8.4 million. I'll take
17 105 percent return any day.

18 Let's look at the Farallon purchase of HarbourVest.
19 Purchase price, \$27 million. Projected profit, \$5.09 million.
20 That is -- oh, I can't read my own writing anymore -- I think
21 that is 18.85 percent. I would again gladly take that every
22 day of the week, whether it's a distressed asset or otherwise.

23 But let me make one really important point that Mr.
24 Dondero obfuscated, Mr. McEntire does not acknowledge, and it
25 is just a fact. These are projected profits if all Mr. Seery

1 does is hit the plan. November 30, 2021. If he does no
2 better than what he thought these assets were worth then, this
3 is the expected return. So for those trades that we've talked
4 about, that's a slam dunk even on that.

5 But let's look about -- we'll talk about upside. Because,
6 as Your Honor knows from doing bankruptcy cases, upside, it's
7 all about upside for people who are purchasing claims. So it
8 isn't just that their returns were capped at these already-
9 ample percentages. If Class 8, for example, of Redeemer paid
10 out in full, they would be making not -- oh, gosh, I'm not
11 sure I should do this on the fly -- but they'd be recovering
12 \$137 million on the Class 8 claim, not the \$97.71 million. So
13 there's another \$40 million of upside.

14 Even if it's a low-probability event, that's a -- hedge
15 funds do that all day every day.

16 Same here with Acis. Paid \$8 million, expected \$16.4
17 million, but they could get up to \$23 million.

18 Now, we've heard so much about how Class 9 was worthless,
19 worthless, worthless. No, it's not. There's always the
20 potential for upside. Paid \$27 million. Could recover \$45
21 million just on Class 8. Could recover another \$35 million on
22 Class 9. They could recover \$80 million on a \$27 million
23 purchase. Now, the probability of that is complicated, but
24 it's not zero. We know that it's not zero. All we've heard
25 from them today is that Mr. Seery is -- could pay off 8 and 9

1 in full. So I don't think that is even remotely plausible.

2 Let's talk briefly about UBS. They like to talk about UBS
3 for the projected profit of \$3.61 million in loss. But that
4 was -- that's in August, and that claim trades.

5 So a couple of things that happened between the November
6 30 disclosure statement setting that projected value and the
7 purchase of the UBS claim in August. Number one is we are
8 nine, ten months past the worst of COVID. And Your Honor
9 could take judicial notice of massive market movements just if
10 you do nothing.

11 We don't need to get to that, because we talked all
12 morning about MGM. May 26th, it's announced publicly. May
13 26, 2021.

14 So the notion that a purchaser of a UBS claim in the
15 summer of 2021, after this MGM transaction is announced, would
16 think, you know what, I think these claims are only worth what
17 they were worth back in November, is not plausible.

18 And so this is why the comparisons to the debt, the exit
19 financing, well, 12 percent. That's a 12 percent capped
20 return. We're talking here about returns of 25 percent, 105
21 percent, 18.85 percent, just based on projections at the --
22 sort of in the darkest days post-COVID.

23 So it's not plausible. If a court were looking at this
24 just under the 12(b)(6) standard, we would be -- we'd be
25 dismissing this claim as well. And we really -- respectfully,

1 Your Honor, we need that ruling. We think we need that ruling
2 so that whatever the -- whatever they may say the standard is
3 in the Fifth Circuit, we only have to go one time. And we
4 really believe that we're entitled to that.

5 I'll let Your Honor -- I will just stand on the deck and
6 our briefs on the *pro* and the *quo*. But meet-and-greets, these
7 are just conclusory allegations in the complaint. He says
8 they worked -- that he worked for them 10 or 15 years ago,
9 which some of that's not even true, but even if it were all
10 true, if I were beholden to every client I've met at a
11 schmooze fest or everybody I worked for in a group 20 years
12 ago or 15 years ago, you know, I would be incapable of
13 operating without a conflict of interest. And it's just not
14 plausible. This is something that needs to go.

15 Unless the Court has questions, I will cede the remainder
16 of our time to Mr. Morris.

17 THE COURT: No questions. Thank you.

18 CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

19 MR. MORRIS: Thank you so much, Your Honor, for your
20 patience. It's been a very long day. I am very grateful that
21 we're going to finish today.

22 As I said at the beginning, I believe this exercise, as
23 difficult as it may have been, is so important and so vital,
24 preserving this estate and what's left of it.

25 The gatekeeper exists for very important reasons. Your

1 Honor made those findings in her order that has been upheld on
2 appeal. And we're here to make sure that frivolous litigation
3 is not commenced against my clients, or, frankly, against
4 Stonehill and Farallon, given their capacity as Claimant
5 Oversight Board members.

6 Hunter Mountain confuses argument with facts. There's no
7 facts here to support anything, and that's what the gatekeeper
8 is about. The gatekeeper is making sure that there's a good-
9 faith basis to pursue claims. And as Mr. Stancil points out,
10 it is certainly acceptable to state things upon information
11 and belief. But the point of the gatekeeper is if somebody
12 says -- not somebody says -- somebody offers proof that those
13 beliefs are wrong, you no longer have a plausible claim. And
14 that's why we thought it was so important to go through this
15 exercise today. Because the facts show that their beliefs are
16 simply wrong, and the entire complaint is based on their
17 beliefs.

18 There is zero evidence concerning the compensation other
19 than their belief that the compensation is excessive. The
20 case is over. Like, you could stop there. I'm going to go
21 through a bunch of things that -- you could stop there.

22 I want to actually begin backwards, though, in time, with
23 the HarbourVest settlement. Right? After two years of
24 litigation and re-litigation and re-litigation of the
25 HarbourVest settlement, the claims of insider trading, finally

1 the Court has before it admissible indisputable evidence that
2 Mr. Seery negotiated the terms of the HarbourVest settlement
3 before he ever got this notorious email from Mr. Dondero.
4 That should be a finding of fact in Your Honor's order and it
5 should never be -- nobody should ever make that allegation
6 again. It's over. You have the documents. You have the
7 email from Mr. Seery to the board, here are the terms, and
8 those are the terms Your Honor approved.

9 And there's more. Because this is so important for us,
10 because we're tired of being accused of wrongdoing. We're
11 tired of being falsely accused of wrongdoing.

12 \$22-1/2 million. That's the valuation Mr. Seery put on
13 it. You can see that he's doing it to his Independent Board
14 colleagues, copying his lawyers. He's telling them where he
15 got it, from Hunter Covitz. The evidence is now in the
16 record. It came from a regularly-published NAV report from
17 November 30th. It was seven days old. It can never be
18 disputed again that \$22.5 million was a fair value, not based
19 on some subjective view of Mr. Seery but based on the person
20 who gave him the report that everybody relies upon that Mr.
21 Dondero got.

22 And it was ratified yet again in the audited financial
23 statements that came out, and it shows for the period ending
24 -- this is Exhibit 60, I believe -- for the period ending
25 December 31, 2020, \$50 million. Okay, so it went up a few

1 million dollars in December.

2 This is their case? This is the case? Your Honor I know
3 is still working on the motion to dismiss. That's Mark
4 Patrick, right? That's the complaint that he brought. That's
5 what this is about. I don't mean to confuse the issue, but
6 it's time to put this stuff to rest, because it's wrong. Mr.
7 Dondero has lost and he's got to get over it at some point.

8 But here's the best piece of evidence about this whole
9 shenanigans about MGM being inside information. Mr. Dondero
10 filed a 15-page objection to the HarbourVest settlement and
11 didn't say a word about it. How is that possible? Six days
12 before the settlement, he sends this email. Two weeks later,
13 in January, he files a 15-page objection and doesn't mention
14 anything about insider trading, MGM, or any wrongdoing by Mr.
15 Seery. In fact, he argues the exact opposite, that Mr. Seery
16 cut a bad deal. How is that possible? This is a plausible
17 claim?

18 It gets better, or worse, depending on your point of view.
19 CLO Holdco filed an objection and they said they're entitled
20 to buy the asset. This is Mr. Dondero's, you know, operating
21 arm of the DAF. They lost -- they actually had an honorable
22 person who concluded, I don't really have that right. But
23 these are the claims that Mr. Patrick is asserting, and he
24 asserted them on April -- in April, before the MGM deal was
25 announced. Right? And Your Honor found, and that's why it

1 was so important for the Court to take judicial notice of the
2 second contempt order, because Mr. Dondero was intimately
3 involved in bringing those claims and in bringing those claims
4 against -- or trying to bring those claims against Mr. Seery,
5 in violating of the gatekeeper. This is all tied together.

6 I have to tell you, I don't know why we're not doing Rule
7 11. Forget about colorable claims. This is a fraud on the
8 Court. It really is. And I don't know when it's going to
9 stop. I'd love to move on with my life, to be honest with
10 you.

11 The tender offer. He's out there doing a tender offer
12 benefitting as the fund that he manages acquires more shares
13 and his interest goes up and the value goes up with all these
14 MGM holdings. Really? And he's going to accuse Mr. Seery of
15 wrongdoing?

16 There was one point of Mr. Dondero's testimony that made
17 my heart skip a beat. It's when he referred to the need to
18 get discovery. And why did it skip a beat? Because he
19 actually had a moment of candor where he admitted that the
20 notion that Mr. Seery gave them material nonpublic inside
21 information was his thought. It's not anything that Farallon
22 ever told him. And then it spins and it spins and it spins,
23 and finally when he gets to the fifth version of his sworn
24 statement MGM suddenly appears. It's not right. Colorable
25 claims? Fraudulent claims.

1 What's the undisputed evidence right now? I'll take Mr.
2 Dondero at his word that Mr. Patel told him that Farallon
3 bought the claims in February or March. How did they
4 reconcile that with the undisputed testimony that Mr. Seery
5 thereafter invited Farallon to participate in the exit
6 financing? And they signed an NDA in early April. Why would
7 you sign an NDA if you already got inside information? Who
8 would do that? What would be the purpose of that?

9 How do you reconcile the fact that, according to Mr.
10 Dondero, the claims were already in Farallon's pocket when
11 they signed an NDA to get information for an exit facility.
12 Is that plausible?

13 We've heard Mr. McEntire say a bunch of times it's much
14 broader than MGM. Not only not a scintilla of evidence, but
15 no substantive allegation. Again, confusing argument with
16 facts. Because he had -- yes, Mr. Seery had access to inside
17 information relative to Highland. He's the CEO. But where is
18 the evidence that he shared anything with anybody? There is
19 nothing.

20 Mr. Dondero admitted in his motion -- in a moment of
21 candor, he said that's what he concluded based on the fact
22 that Mr. Patel supposedly told him, I bought because Seery
23 told me to. He made the inference. No evidence. Nothing.

24 They're bringing this case for the benefit of innocent
25 parties? These people have told you time and again that

1 assets exceed liabilities. What innocent parties? Where are
2 they and how come they're not -- let's get to that point, too.
3 Because they're saying, oh, Mr. Seery is, like, just not
4 declaring the end of this. Seriously? How much do they think
5 Mr. Seery should reserve for indemnification claims as we do
6 trials like this with a mountain of lawyers billing \$800,
7 \$1,500 an hour? Seriously? Mr. Seery is somehow acting in
8 bad faith by not declaring the end of this case? How much is
9 he supposed to reserve? They keep skipping over that. We'll
10 talk about that in the mediation motion. We'll talk about
11 that in the Hunter Mountain motion in July. Who's prosecuting
12 that? Mr. Dondero's lawyer. I know there's a really big
13 separation between Hunter Mountain and Mr. Dondero, but
14 Stinson is prosecuting that claim on behalf of Hunter Mountain
15 when they're seeking information.

16 And they complain about the legal fees? We've put our
17 pens down. Kirschner put his pens down. We put down the
18 claim objection. What we're doing is defense at this point.

19 We're awaiting the ruling on the notes litigation, and we
20 will very much prosecute the vexatious litigant motion if
21 Judge Starr grants the pending motion to exceed the page limit
22 that's been out there for months. I'm not sure what's
23 happening there. We'll do that for sure. But otherwise,
24 we're just playing defense.

25 We're here today because they've made a motion, a motion

1 that lacks any good-faith basis whatsoever. And that's why
2 today was so important, so the Court could hear the witnesses.
3 They could -- the Court -- I mean, think about it. Texas
4 State Securities Board. The audacity of saying that somehow a
5 letter from the Texas State Securities Board saying they're
6 taking no action after conducting an investigation of
7 Dugaboy's claim of insider trading is irrelevant? Like, what?

8 I've told you before, all we do is play Whack-A-Mole.
9 Whack-A-Mole. They make an argument, we prove it's frivolous,
10 so they just make a new argument. Their pleading says their
11 claims are colorable because there's an open investigation.
12 Now there's no investigation and they say that's irrelevant.
13 How can they say that with a straight face? I couldn't.

14 I want to talk about Mr. Seery. I want to finish with my
15 Mr. Seery. I may not use all my time. We can go home early.

16 (Laughter.)

17 THE COURT: It's past early.

18 MR. MORRIS: But this guy has worked doggedly, Your
19 Honor, and I will defend him until the end of time. He's a
20 man who has so far exceeded expectations. And they're saying
21 he's not -- he's overpaid? The guy is overpaid? When he's
22 into Class 9? When he's being pursued with these frivolous
23 claims? Every day he's being attacked. How much do they
24 think he should be paid? I would have loved to -- I hope --
25 no, I don't hope. I don't think there's any reason to hear

1 expert testimony. I think Your Honor should exercise -- the
2 Court should exercise its discretion and say there's no need,
3 the Court doesn't need to hear expert testimony.

4 But if we do, I'll be delighted to hear their expert's
5 view on what Mr. Seery -- if it's not \$8.8 million for all
6 these years, what should it be, after he takes an estate from
7 71 percent on the 8s to, according to them, assets exceed
8 liabilities, 9s are paid in full?

9 You know what? If they put their pens down, maybe there
10 would be a conversation. But as long as we keep doing this
11 ridiculous, baseless, frivolous litigation, Mr. Seery is going
12 to conserve resources, because he's got to pay people like me
13 to defend him and to defend the estate. This is a preview of
14 what we'll talk about at the mediation motion. He's doing a
15 great job. He's devoting his life to it. He has no other
16 income. He's got no other job. It's wrong.

17 The claims are not only not colorable, they are frivolous.
18 I ask the Court to stop this in its tracks right now.

19 Thank you very much.

20 THE COURT: Thank you.

21 All right. Is there any time for the Movant to have the
22 last word, which we usually give the Movant the last word.

23 THE CLERK: The Movant, I think, has a little under
24 -- maybe about a minute left.

25 THE COURT: Anything you want to say in a minute?

1 MR. MCENTIRE: Yes, just I'll take 30 seconds. How
2 is that?

3 THE COURT: Okay.

4 REBUTTAL CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN

5 MR. MCENTIRE: I just want to direct your attention
6 to our reply brief, specific paragraphs that address your
7 question about authorities. We do cite several cases on Page
8 41, 40 and 41, dealing with the issue of unjust enrichment.
9 That's it.

10 Thank you, Your Honor, very much.

11 THE COURT: Okay. Thank you. Unjust enrichment?

12 MR. MCENTIRE: Disgorgement.

13 THE COURT: Okay. But I was really, you know, claims
14 trading in the bankruptcy context, just your best --

15 MR. MCENTIRE: Well, I think the cases that you
16 identified were our best cases. The --

17 THE COURT: Okay.

18 MR. MCENTIRE: -- *Adelphia* and the other cases.

19 THE COURT: All right. Well, --

20 MR. MCENTIRE: There are other cases, Your Honor, in
21 different contexts. There's also the *Washington Mutual* case
22 dealing with equitable disallowance. There's also the *Mobile*
23 *Steel* case, a Fifth Circuit --

24 THE COURT: *Mobile Steel*? Oh, my goodness. Okay.

25 MR. MCENTIRE: Okay. All right.

1 THE COURT: 1968? Or no. That doesn't mean it isn't
2 still quoted often, but --

3 MR. MCENTIRE: Those would also be relevant.

4 THE COURT: Equitable subordination --

5 MR. MCENTIRE: Yes, ma'am.

6 THE COURT: -- when there's bad acts.

7 MR. MCENTIRE: And Footnote #10 in the *Mobile Steel*
8 case. That is relevant, too. Just, --

9 THE COURT: Okay.

10 MR. MCENTIRE: Thank you.

11 THE COURT: All right. So I gave a deadline of
12 Monday, right, --

13 MR. STANCIL: Yes.

14 THE COURT: -- to reply to the response to the
15 motion in limine?

16 MR. STANCIL: Yes, Your Honor. Do you want time
17 before you leave for the day? I mean, it's not going to be
18 that long, so 4:00 o'clock Monday? Does that work for you?

19 THE COURT: I don't care. I probably won't start
20 looking at it until the next day.

21 MR. STANCIL: But I will -- I'll just reserve and so
22 I don't have my associates --

23 THE COURT: Yes. I think these days midnight, 11:59
24 p.m., is what lawyers tend to want.

25 MR. STANCIL: Oh, not this lawyer.

1 THE COURT: Oh, well, okay. Okay. So I'll just have
2 to look at this, and probably by Friday of next week I will
3 reach out through Traci and let you know what my decision is
4 on whether we're going to have another day of just 30 minutes,
5 30 minutes of experts.

6 MR. MCENTIRE: Your Honor, another housekeeping
7 matter. You'd wanted a copy of our PowerPoint, --

8 THE COURT: Yes.

9 MR. MCENTIRE: -- which I'm pleased to give you. We
10 found a typo that we can correct electronically on the version
11 I showed.

12 THE COURT: Uh-huh.

13 MR. MCENTIRE: I likely will send that to you and I
14 can copy opposing counsel. Is that --

15 THE COURT: Okay. Send it to Traci Ellison, my
16 courtroom deputy.

17 MR. MCENTIRE: All right.

18 THE COURT: And she'll --

19 MR. MCENTIRE: We'll do that first thing in the
20 morning.

21 THE COURT: Okay.

22 MR. MCENTIRE: So you'll have a copy --

23 MR. STANCIL: Can we get the hard copy that -- from
24 today, though?

25 MR. MCENTIRE: No, that had a typo on it. I really

1 don't want to share it. We fixed it.

2 THE COURT: What? I'm sorry, what?

3 MR. MORRIS: That's fine.

4 MR. STANCIL: Never mind.

5 THE COURT: Do I not need to know?

6 MR. STANCIL: Let's all go home.

7 THE COURT: Okay. And then my last question is --
8 and there was a mention of the CLO Holdco lawsuit, where
9 there's a pending motion to dismiss. There's an opinion I'm
10 writing well underway. I just keep getting sidetracked by
11 other things. Imagine that. So I know that people are
12 wanting to get an answer to that. So, trust me, it's going to
13 get done here pretty soon.

14 You mentioned Brantley Starr. I mean, it is not my role
15 to pick up the phone and call him and say hey, --

16 MR. MCENTIRE: No, I wasn't suggesting that.

17 THE COURT: -- District Judge, get busy on that.

18 MR. MCENTIRE: Yeah.

19 THE COURT: But I'll at least tell you, I know the
20 man seems to have more jury trials than any judge I've seen in
21 this building, so I suspect he's working late hours trying to
22 get things done.

23 MR. MCENTIRE: Yeah.

24 THE COURT: What do we have upcoming? We have what
25 you called the mediation motion. When is that set?

1 MR. MORRIS: June 26.

2 THE COURT: June 26th. Be here before we know it.

3 MR. MORRIS: Yeah. And just to keep the Court
4 informed, the Movant's reply was due today. We gave them a
5 week extension. They asked earlier today. I saw in my email
6 we gave them. So I think you should expect the reply on the
7 15th. The hearing is the 26th, and that's not in person.

8 THE COURT: Okay. Well, I'm very interested to dive
9 into those pleadings. I knew the motion was coming because
10 one of the lawyers said at a prior hearing it would be coming.
11 So I haven't read any of those pleadings, but, well, I'm just
12 very interested to hear how this plays out. I mean, I've said
13 it before.

14 MR. MORRIS: Uh-huh.

15 THE COURT: We had global mediation in summer of
16 2020. We had two very fine mediators. We had a heck of a lot
17 settled, to my amazement. But we're now way down the road and
18 whole lot of money has been eaten up fighting lots of stuff.
19 I mean, it would have to be pens down. There's an enormous
20 amount out there that would have to be part of it, and I just
21 don't know if everyone is fully appreciating that. I hope
22 they are. Anyone listening. We're really, really far down
23 the road now, and there's just how many appeals? Someone at
24 one time told me there were 26. I bet it's more than that by
25 now.

1 MR. MORRIS: I think that's right. I think we argued
2 on Monday, what is it, the sixth of nine appeals in the Fifth
3 Circuit. And we've got, you know, a cert petition that we're
4 waiting to hear from on the Supreme Court. And yeah, there's
5 still a couple dozen matters in the district court.

6 THE COURT: Okay.

7 MR. MORRIS: Not one of them, not one of them we're
8 prosecuting, with the exception of waiting on the Court to
9 rule on the Report and Recommendation on the notes litigation
10 and vexatious litigant. We are not the plaintiff, movant, in
11 anything.

12 THE COURT: We've got adversaries. The Reports and
13 Recommendations. That's just made everything go a lot slower.
14 But all right. So we have that. And anything else coming up?

15 MR. MORRIS: I think on July 11th maybe there is a
16 hearing scheduled on Hunter Mountain. If you recall, Hunter
17 Mountain had that valuation motion last year that you denied
18 on the grounds that they didn't have a legal right to
19 valuation information. They made a motion earlier this year
20 for leave to file an adversary proceeding to assert an
21 equitable claim and some other declaratory relief, is my
22 recollection.

23 While we filed an opposition, we didn't oppose the relief
24 requested, so that motion got resolved. They have filed an
25 adversary proceeding. And I think, if I remember correctly,

1 our response to the complaint, maybe that's what due. Oh, the
2 11th is a status conference. It could be a status conference,
3 maybe to set a scheduling order.

4 THE COURT: Okay.

5 MR. MORRIS: But that's it. I think that's the only
6 thing on the calendar.

7 THE COURT: That's a lot.

8 MR. MCENTIRE: Thank you.

9 THE COURT: Anything else? Okay.

10 MR. STANCIL: Thank you, Your Honor.

11 MR. MORRIS: Thank you, Your Honor.

12 THE CLERK: All rise.

13 (Proceedings concluded at 7:18 p.m.)

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CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the
above-entitled matter.

22 **/s/ Kathy Rehling**

06/12/2023

23

24 _____
Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

009843

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